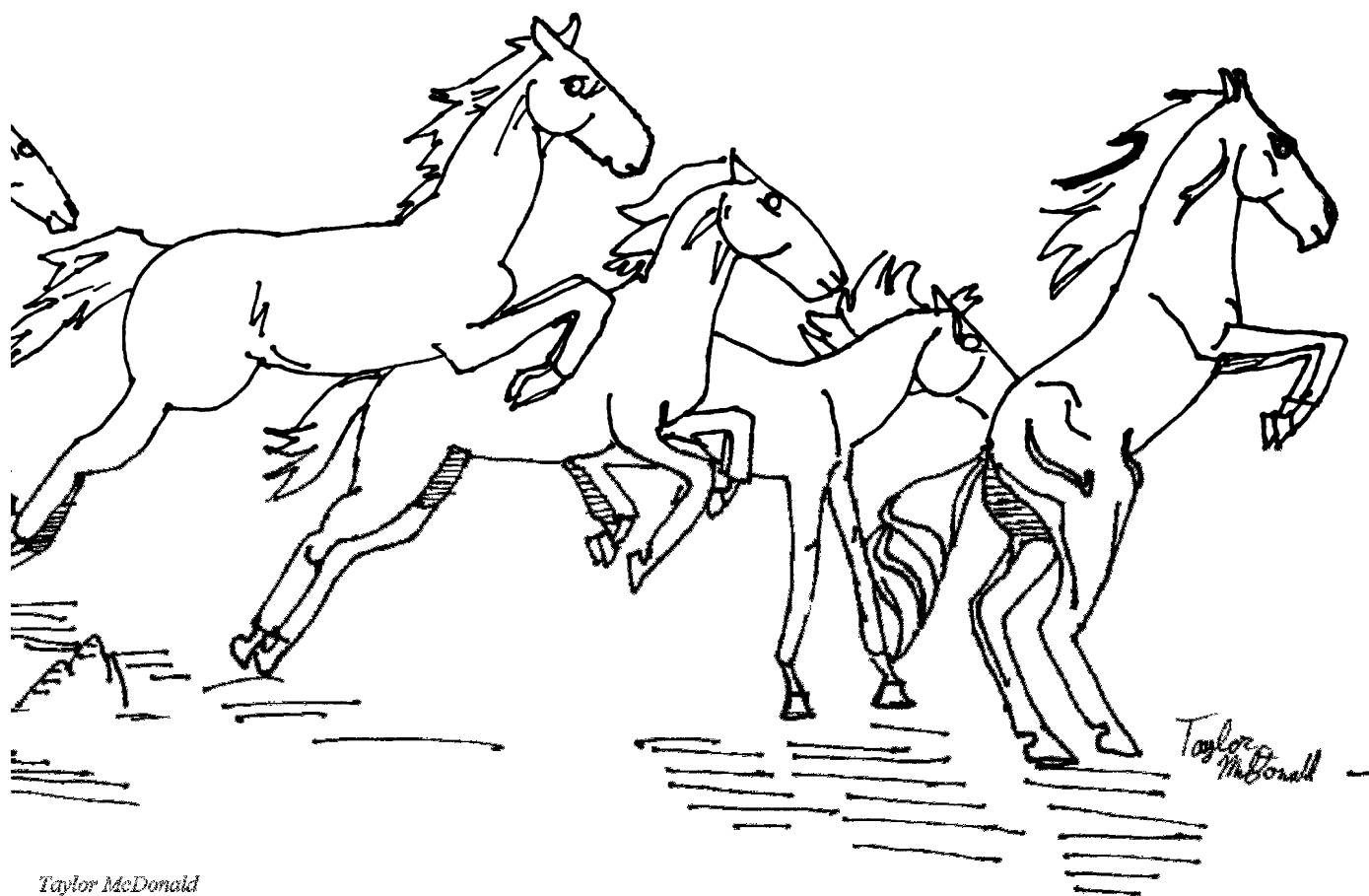

TEXAS REGISTER

Volume 32 Number 49

December 7, 2007

Pages 8981 - 9172



*Taylor McDonald
8th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for November 19, 2007

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2009, Aliece Watts of Burleson (replacing Debbie Benningfield of Hockley who resigned).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2009, Alan Levy of Fort Worth (Mr. Levy is being reappointed).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2009, Sridhar Natarajan of Boerne (Mr. Natarajan is being reappointed).

Appointed to the Texas Forensic Science Commission for a term to expire September 1, 2009, Samuel Bassett of Austin (Mr. Bassett is being reappointed). Mr. Bassett will service as Presiding Officer of the board.

Appointed to the Interagency Council for Genetic Services for a term to expire September 1, 2009, Karen Littlejohn of Carrollton (replacing Janet Shepard of Brenham whose term expired).

Appointed to the Interagency Council for Genetic Services for a term to expire September 1, 2009, Kyle Jones of Marble Falls (replacing Robert Cleveland of Houston whose term expired).

Designating Betty Reinbeck of Sealy as Presiding Officer of the Texas Facilities Commission for a term at the pleasure of the Governor. Ms. Reinbeck is replacing Brenda Pejovich of Dallas as presiding officer.

Rick Perry, Governor

TRD-200705826



Appointments

Appointments for November 26, 2007

Appointed as Judge of the 449th Judicial District, Hidalgo County pursuant to SB 1951, 80th Legislature, Regular Session, effective September 1, 2007, for a term until the next General Election and until his successor shall be duly elected and qualified, Daniel G. Rios of Edinburg.

Appointed to the Texas Small Business Industrial Development Corporation for a term to expire at the pleasure of the Governor, William C. Lawrence of Highland Village (replacing Nancy Kudla of San Antonio who resigned).

Appointed to the Public Safety Commission for a term to expire December 31, 2011, Elizabeth M. Anderson of Dallas (replacing Louis E. Sturns of Fort Worth who resigned).

Appointed to the State Commission on Judicial Conduct for a term to expire November 19, 2009, William C. Lawrence of Highland Village (replacing William A. Prewitt of Horseshoe Bay who resigned).

Appointed to the State Commission on Judicial Conduct for a term to expire November 19, 2011, Janelle Shepard of Weatherford (replacing Cynthia Tauss Delgado of El Paso who resigned).

Appointments for November 27, 2007

Appointed as Judge of the 312th Judicial District Court, Harris County, for a term until the next General Election and until his successor shall be duly elected and qualified, David Farr of Houston. Judge Farr is replacing Judge James D. Squier who resigned.

Appointed to the Study Committee on Private Participation in Toll Projects, SB 792, 80th Legislature, Regular Session, for a term to expire December 31, 2008, Johnny W. Johnson of Houston.

Appointed to the Study Committee on Private Participation in Toll Projects, SB 792, 80th Legislature, Regular Session, for a term to expire December 31, 2008, Robert W. Poole, Jr. of Plantation, Florida.

Appointed to the Study Committee on Private Participation in Toll Projects, SB 792, 80th Legislature, Regular Session, for a term to expire December 31, 2008, Grady W. Smithey, Jr. of Duncanville.

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2013, James H. Lee of Houston (Mr. Lee is being reappointed).

Rick Perry, Governor

TRD-200705924



Proclamation 41-3138

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the membership of the Texas House of Representatives in House District No. 97, which consists of part of Tarrant County; and

WHEREAS, the results of the special election have been officially declared; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.025(a) of the Texas Election Code requires a runoff election to be held not earlier than the 20th or later than the 45th day after the final canvass of the main election;

WHEREAS, Tex. Elec. Code Ann. §3.003 requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in House District No. 97 on Tuesday, December 18, 2007, for the purpose of electing a State Representative for House District No. 97 to serve the remainder of the term that began on January 9, 2007.

Early voting by personal appearance shall begin on December 10, 2007, in accordance with Tex. Elec. Code Ann. §§85.001(b) and (c).

A copy of this order will be mailed immediately to the County Judge of Tarrant County, and all appropriate writs will be issued and all proper proceedings will be followed, to the end that said election may be held to fill the vacancy in House District No. 97 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 19th day of November, 2007.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200705918

◆ ◆ ◆

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinion

RQ-0646-GA

The Honorable Jana Duty

Williamson County Attorney

Williamson County Justice Center, Second Floor

405 Martin Luther King Box 7

Georgetown, Texas 78626

Re: County payment to vendors under the Low Income Vehicle Repair Assistance, Retrofit and Accelerated Retirement Program (LIRAP), and reimbursement to county from the Texas Commission on Environmental Quality (TCEQ) (RQ-0646-GA)

Briefs requested by December 20, 2007

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200705921

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: November 28, 2007



Opinions

Opinion No. GA-0580

The Honorable Jana Duty

Williamson County Attorney

405 M.L.K. Street, Box 7

Georgetown, Texas 78626

Re: Whether a county that chooses to operate under subchapter C of chapter 111, Local Government Code, may appoint its county judge as its county budget officer (RQ-0590-GA)

SUMMARY

Under Texas common law, a county commissioners court cannot appoint one of its members to an office over which the commissioners court has appointment authority. Subchapter C of chapter 111, Local Government Code, authorizing a county commissioners court of an eligible county to appoint a county budget officer, does not abrogate the common law. Accordingly, a county that chooses to operate under sub-

chapter C is not authorized to appoint its county judge to serve as its county budget officer.

Opinion No. GA-0581

Mr. Timothy K. Irvine, Administrator

Texas Real Estate Commission

Post Office Box 12188

Austin, Texas 78711-2188

Re: Whether an applicant for a real estate inspector license is required to carry general liability insurance, professional liability insurance, or both (RQ-0591-GA)

SUMMARY

The Eightieth Legislature amended Occupations Code sections 1102.114 and 1102.203 to require liability insurance coverage for persons applying for a real estate inspector's license or renewal of such license. The insurance must have a minimum limit of \$100,000 per occurrence to protect the public against negligence or incompetence in violation of chapter 1102, subchapter G. The insurance requirement does not apply to intentional acts.

If a real estate inspector has more than one insurance policy applicable to the same occurrence, a combined coverage of \$100,000 for that occurrence under all policies would comply with section 1102.114(c).

Opinion No. GA-0582

The Honorable Geoffrey I. Barr

Comal County Criminal District Attorney

150 North Seguin Avenue, Suite 307

New Braunfels, Texas 78130

Re: Whether a county judge may issue a single mass gathering permit for multiple events (RQ-0592-GA)

SUMMARY

A county judge may not issue a single mass gathering permit for multiple events.

Opinion No. GA-0583

The Honorable Elizabeth Murray-Kolb

Guadalupe County Attorney

101 East Court Street, Suite 104

Seguin, Texas 78155-5779

Re: Authority of a county to lease a generator to a radio station (RQ-0593-GA)

SUMMARY

The purchase and lease of a generator in conjunction with a county's emergency communications to the public may be permissible under certain provisions of the Texas Disaster Relief Act and the Texas Health and Safety Code.

Article III, section 52 and article XI, section 3 of the Texas Constitution prohibit the gratuitous application of public funds for a private purpose. As to the lease of a county generator to a local radio station, neither constitutional provision precludes the lease if the commissioners court determines: (1) the lease has as its predominant purpose the accom-

plishment of a public, rather than a private, purpose; (2) the county retains sufficient control over the generator to ensure accomplishment of the public purpose and to protect the generator; and (3) the public receives a return benefit.

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200705920

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: November 28, 2007

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Securities Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Securities Board proposes the repeal of §133.1, a form concerning a Texas open records request. The proposed repeal of the existing form will allow for the simultaneous adoption of a new form, which is being concurrently proposed.

Carla James, Director, Staff Services Division, and David Weaver, General Counsel, have determined that, for the first five-year period the repeal is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. James and Mr. Weaver also have determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be the elimination of an outdated form. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Government Code, Title 5, Chapter 552.

Statutes and codes affected: none applicable.

§133.1. *Texas Open Records Request.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705752

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-8303



7 TAC §133.1

The Texas State Securities Board proposes new §133.1, a form concerning a request for public information. The proposed new section adopts by reference a form that updates references to "public information" instead of "open records" and to the Office of the Attorney General as the agency having authority over the regulations for copy charges. Information on the existing form that is no longer needed has been omitted from the proposed new form. In addition, the new form incorporates various non-substantive and cosmetic changes. The existing form adopted by reference in §133.1 is being concurrently proposed for repeal.

Carla James, Director, Staff Services Division, and David Weaver, General Counsel, have determined that, for the first five-year period the rule is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. James and Mr. Weaver also have determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that the form reflects accurate references, includes only needed information, and is more user-friendly. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Government Code, Title 5, Chapter 552.

Statutes and codes affected: none applicable.

§133.1. Texas Public Information Request.

The State Securities Board adopts by reference the public information request form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705753

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 6, 2008
For further information, please call: (512) 305-8303



7 TAC §133.7

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Securities Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Securities Board proposes the repeal of §133.7, a form concerning an application for registration of securities. The proposed repeal of the existing form will allow for the simultaneous adoption of a new form, which is being concurrently proposed.

Micheal Northcutt, Director, Registration Division, has determined that, for the first five-year period the proposed repeal is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Northcutt also has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be the elimination of an outdated form. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-7 and 581-35.

Statutes and codes affected: none applicable.

§133.7. Application for Registration of Securities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705755

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 6, 2008
For further information, please call: (512) 305-8303



7 TAC §133.7

The Texas State Securities Board proposes new §133.7, a form concerning an application for registration of securities. The proposed new section adopts by reference a form that replaces an existing form to eliminate the requirement that a corporate applicant provide a certification regarding Texas franchise taxes. The certification is no longer required under the Texas Business Corporation Act. The new proposed form also incorporates various nonsubstantive and cosmetic changes. The existing form §133.7 is being concurrently proposed for repeal.

Micheal Northcutt, Director, Registration Division, has determined that, for the first five-year period the proposed rule is in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to streamline the securities registration process by eliminating an unnecessary certification. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-7 and 581-35.

Statutes and codes affected: none applicable.

§133.7. Application for Registration of Securities.

The State Securities Board adopts by reference the application for registration of securities form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

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Denise Voigt Crawford
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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §§8.206 - 8.208

The Railroad Commission of Texas (Commission) proposes new §§8.206 - 8.208, relating to Risk-Based Leak Inspection Program, Leak Grading and Repair, and Mandatory Removal and Replacement Program, to enhance the Commission's pipeline safety program. The proposed new rules require Texas gas distribution companies to establish a risk-based schedule of increased leak inspections; standardize leak grading and repair time frames; and remove and replace leaking compression couplings and compression couplings at presently known service riser installations if the couplings are not manufactured and installed with secondary restraint and if they are not resistant to pull-outs.

The Commission's current pipeline safety regulations contain two time frames for conducting leak surveys: once each calendar year not to exceed fifteen months for areas identified as business districts, and once every five years for those areas outside of business districts. Based on the Commission's success with risk modeling for pipeline integrity management, the Commission proposes to adopt a risk-based leak inspection program to more adequately address the pipelines that potentially pose the greatest risk of leaking. Under this proposal, operators would create a risk model using five risk factors relating to the physical characteristics and environment of the pipeline segment. The factors include pipe location, nature of the pipe system, the history of corrosion, environmental considerations regarding gas migration, and other factors including weather, construction activity, and operator judgment. Based on a risk ranking from high to low, operators of gas distribution systems would schedule leak inspections for a given pipeline segment at a time interval that is appropriate to address the identified risk.

The Commission proposes adopting a slightly revised version of the Gas Piping Technology Committee (GPTC) standards in ANSI Z380.1 in this rule proposal. Currently, under the standards developed by the GPTC, identified leaks are graded by their degree of hazard. The GPTC, formerly known as the Gas Piping Standards Committee, is an ANSI Accredited Standards Committee (ASC) designated as GPTC/Z380 which maintains and develops ANSI Z380.1, Guide for Gas Transmission and Distribution Systems (Guide), first issued in 1970. GPTC members include persons with expertise from the natural gas transmission, distribution, and manufacturing fields, as well as from federal and state regulatory agencies. The GPTC has approximately 80 members, 40 of which have voting rights and are known as the Main Body. The Main Body is balanced in accordance with ANSI requirements under the following categories: gas transmission, gas distribution, manufacturing, regulatory, and the general interest. The GPTC is structured into three Divisions and has a number of standing task groups and sections that develop and approve guide material. Generally, leaks are classified as Grade 1, which is the most hazardous; Grade 2; or Grade 3, which is the least hazardous. Under the GPTC's guidelines, a Grade 1 leak represents an existing or probable hazard to persons or property and requires immediate action to eliminate the hazard and make repairs; Grade 2 leaks are non-hazardous at the time of detection, but are required to be scheduled for repair within a year; and Grade 3 leaks are non-hazardous at the time of detection and reasonably can be expected to remain non-hazardous. The GPTC does not set a time frame within which Grade 3 leaks must be repaired.

Under the Commission's proposal, Grade 1 leaks would still be required to be repaired immediately. The Commission proposes a more stringent time frame than the GPTC's for repair of Grade 2 and Grade 3 leaks, as follows: Grade 2 leaks would be re-evaluated monthly and repaired no later than six months from the date of detection; Grade 3 leaks would be re-evaluated once each calendar year, not to exceed 15 months and repaired no later than three years from detection.

Finally, the Commission proposes that for leaks identified on any compression coupling used to join steel pipe, each operator must either replace the leaking compression coupling or repair it using a sleeve welded over the compression coupling. For leaks identified on any compression coupling used to join plastic pipe, each operator must replace the leaking compression coupling. For any other compression coupling used to join plastic pipe that is exposed during operation and maintenance activities, each operator must determine whether the coupling is manufactured and designed to withstand pull-outs, and must replace those compression couplings used to join plastic pipe that the operator identifies as potentially susceptible to pull-outs. In addition, if an operator is unable to determine that a compression coupling was designed with two forms of resistance to pull-outs, the operator must replace the coupling. Each gas distribution operator would be required to remove and replace any and all compression couplings at presently known service riser installations if they are not manufactured and installed with secondary restraint and if they are not resistant to pull-outs. The removal and replacement of such compression couplings must be completed within two years of the effective date of the rule. A progress report is required at the end of each six-month period detailing the number of service riser installations checked, the condition of the coupling, and the total number of compression couplings replaced.

As early as 1997, the Commission introduced the concept of risk-based leakage surveys to the natural gas distribution oper-

ators in Texas. At the time the concept was developed, Safety Division staff met with operators of both large and small distribution systems in Texas to discuss the possibility of each operator creating a risk-based model, based on established risk factors, for scheduling and conducting leak surveys of their pipeline systems. The Safety Division staff recommended the use of the model as an alternative to a prescriptive based regulation to increase leak survey frequencies. Operators also were given the opportunity to work within the risk-based scheduling model in the ongoing program to comply with pipeline safety regulations. Safety Division staff had determined that conducting leakage surveys in some areas at five-year intervals was too infrequent. For example, the sample model discussed the need for more frequent leakage surveys in those systems that had been experiencing leaks in steel pipe installed prior to the requirement for cathodic protection. Staff also confirmed the five-year leakage survey period for new polyethylene lines installed below ground in areas that were not subject to third-party damage (identified in the model as the greatest risk for damage). One operator successfully adopted the model and began conducting leak surveys using the risk-based schedule.

The Commission now proposes to incorporate this risk model into the current requirements for natural gas distribution system for two reasons. The first reason is the changes in the operations of gas distribution systems in Texas. The Commission has identified those risks that affect the continued safe operation of pipelines. By adopting this model as the minimum standard, each operator can apply the risk factors to its pipeline system or segments within its system to determine if more frequent leak surveys are warranted for enhanced safety.

The second reason is to reduce the number of leaks that may have been leaking over an extended period of time. For example, if a leakage survey is conducted on an annual basis and a Grade 2 or Grade 3 leak is identified, the leak will be repaired within six months to 36 months. If the leak survey frequency remains at the minimum five-year interval, the leak could remain unrepaired for that entire period of time. This change in the survey frequency, coupled with the shorter deadlines for making leak repairs, will mean that more leaks will be repaired sooner.

Additionally, the leak survey model proposed in §8.206 will go hand-in-hand with the distribution integrity management rules being developed by the federal Office of Pipeline Safety. Leak survey, leak monitoring, and leak repair are very important factors in the integrity assessment and management of pipeline systems. The implementation of a risk model and consistent leak grading and repair procedures at the distribution system level will allow Texas operators to assess the overall integrity of their systems and manage them according to the federal requirements.

The proposed leak grading and repair model in §8.207 will provide a consistent application of what a "graded" leak is in Texas. For many years, operators throughout Texas (and the United States) have used different standards to characterize the severity of leaks. The Commission proposes adoption of what is widely considered to be a national standard, developed through consensus as part of the work of the Gas Piping and Technology Committee (GPTC). The proposed rule uses the guidelines for determining whether a leak is a Grade 1, Grade 2, or Grade 3 and then establishes time frames for repair. The Commission proposes shorter times for repairing Grade 2 and Grade 3 leaks than are recommended in the GPTC guide (six months for repair of Grade 2 leaks and three years for repair of Grade 3 leaks) to reduce the overall number of unrepaired leaks in Texas.

Data collected from annual reports filed at the Commission show that while the number of leaks repaired by operators each year grows, so also does the number of leaks scheduled for repair. Clearly, the current leakage survey frequencies and repair deadlines do not allow Texas gas distribution system operators to maintain an acceptable level of system integrity. Applying consistent standards for the grading of leaks across Texas will allow both regulators and operators to "speak the same language" when it comes to finding and fixing leaks.

Proposed new §8.208 would require the removal and replacement of certain compression couplings. This past year, the Commission has investigated several incidents involving compression couplings. Through these investigations, the staff has concluded that there may be performance issues with certain types of compression couplings. The Commission took a significant step in October 2007 by requiring all operators that find a leaking compression coupling either to replace it or repair it by welding a protective sleeve over it. The Commission also required the replacement of mechanical couplings, identified in the process of making a leak repair, that may be susceptible to pull-out forces. While the Commission has not concluded that all compression couplings manufactured before 1980 are susceptible to pull-outs, the Commission has identified certain couplings that have experienced leaks. These couplings may already be subject to a replacement program; the proposed new rule would establish a two-year deadline for the replacement of those compression couplings already identified by the operator as part of its replacement program.

Proposed new §8.206 sets forth the requirements for the risk-based leak inspection program. The rule would apply to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192. Under the rule, no later than six months from the effective date of the rule, each operator must have completed and submitted to the Commission on a system basis or on a segment within each system basis a risk-based determination of leak survey frequency. Each operator must create a risk model on which to base its leak inspection program to identify those systems or segments within systems that pose the greatest hazard and thus will be inspected for leaks more frequently. The risk model must identify risk factors and determine the degree of hazard associated with those risk factors. The operator then must establish the leak survey frequency based on the degree of hazard for each system or segment within a system.

Operators must periodically re-evaluate their pipeline systems and update their leak survey inspection programs to address any changes that may be identified through the monitoring of the pipeline system in accordance with the requirements imposed by 49 CFR §192.613, relating to Continuing Surveillance. The leak survey inspection program must be updated at least every three years and within 30 days of a new system or segment being put into operation or if, for any system or segment, there has been a ten percent increase in the number of leaks being upgraded or a ten percent increase in the number of unrepaired leaks.

The minimum frequency for leakage surveys is established in 49 CFR §192.723(b)(1) and (2); however, based on the particular circumstances and conditions, an increased frequency for conducting leakage surveys may be warranted. Surveys must be conducted more frequently in those areas with the greatest potential for leakage and where leakage could be expected to create a hazard. Each operator must consider the following factors in establishing an increased frequency of leakage surveys:

(1) pipe location, which means proximity to buildings or other structures and the type and use of the buildings and proximity to areas of concentrations of people;

(2) composition and nature of the piping system, which means the age of the pipe, materials, type of facilities, operating pressures, leak history records, and other studies;

(3) the corrosion history of the pipeline, which means known areas of significant corrosion or areas where corrosive environments are known to exist, cased crossings of roads, highways, railroads, or other similar locations where there is susceptibility to unique corrosive conditions;

(4) environmental factors that affect gas migration, which means conditions that could increase the potential for leakage or cause leaking gas to migrate to an area where it could create a hazard, such as extreme weather conditions or events (significant amounts or extended periods of rainfall, extended periods of drought, unusual or prolonged freezing weather, hurricanes, etc.), particular soil conditions, unstable soil or areas subject to earth movement, subsidence, or extensive growth of tree roots around pipeline facilities that can exert substantial longitudinal force on the pipe and nearby joints; and

(5) any other condition known to the operator that has significant potential to initiate a leak or to permit leaking gas to migrate to an area where it could result in a hazard, which includes construction activity near the pipeline, wall-to-wall pavement, trenchless excavation activities (e.g., boring), blasting, large earth-moving equipment, heavy traffic, increase in operating pressure, and other similar activities or conditions.

The assignment of inspection priorities is based on the degree of hazard associated with the risk factors assigned to the pipeline system or segments within a system. The determination of leak survey frequency is determined by classifying each pipeline segment based on its degree of hazard associated with each risk factor. Each operator must establish its own risk ranking for pipeline segments to determine the frequency of leakage surveys. Based on a ranking from high to low, each operator must schedule leak inspections for a given pipeline system or segment within a system on a time interval necessary to address the risks. The time interval may range from quarterly to every five years.

The purpose of proposed new §8.207, relating to Leak Grading and Repair, is to establish a more uniform method by which operators can determine the degree or extent of the potential hazard which results from gas leakage and to prescribe remedial actions. Each operator must promptly respond to any notification of a gas leak or gas odor or any notification of damage to facilities by excavators or other outside sources. Each operator must ensure that leak grading is made only by those individuals who possess training, experience, and knowledge in the field of leak classification and investigation, including extensive association with actual leakage work. The judgment of these individuals, based upon all pertinent information and a complete leakage investigation at the scene, forms the basis for the leak grade determination. Each operator also must ensure that its leak detection equipment is properly calibrated.

Proposed new §8.207(b) defines a Grade 1 leak as an existing or probable hazard to persons or property and requires the operator to take action immediately to eliminate the hazard and make repairs. A Grade 1 leak includes but is not limited to any leak which, in the judgment of operating personnel at the scene, is regarded as an immediate hazard; escaping gas that has ignited; any indication of gas, which has migrated into or under

a building, or into a tunnel; any reading at the outside wall of a building, or where gas would likely migrate to an outside wall of a building; any reading of 80% lower explosive limit (LEL) or greater in a confined space; any reading of 80% LEL or greater in small substructures, other than gas associated substructures, from which gas would likely migrate to the outside wall of a building; or any leak that can be seen, heard, or felt, and which is in a location that may endanger the general public or property.

A Grade 1 leak requires that the operator take prompt action to remove the hazardous conditions, which may require one or more of the following: implementing an emergency plan (49 CFR §192.615); evacuating premises; blocking off an area; rerouting traffic; eliminating sources of ignition; venting the area by removing manhole covers, barholing, installing vent holes, or other means; stopping the flow of gas by closing valves or other means; or notifying emergency responders.

Each operator must conduct a follow-up leak investigation immediately after the repair of each Grade 1 leak and shall inspect daily to determine that the leak has been effectively repaired, as evidenced by a gas concentration reading of 0% for a minimum of three consecutive days.

Proposed new §8.207(c) defines a Grade 2 leak as non-hazardous at the time of detection and requires the operator to schedule repair based on probable future hazard. A Grade 2 leak, because of its location and magnitude, can be scheduled for repair on a normal routine basis with periodic reinspection as necessary. An operator must repair or clear a Grade 2 leak no later than six months from the date the leak was reported, unless the leak meets the criteria set forth in paragraphs (2)-(4) of the subsection. Each operator must re-evaluate every Grade 2 leak at least once every 30 days until repaired or cleared. Certain types of leaks, listed in §8.207(c)(2), must be repaired within 90 days of detection.

Because Grade 2 leaks vary greatly in degree of potential hazard, some, when evaluated by the criteria in §8.207(c)(3) may require a scheduled repair within the next five working days. Others will require repair within 30 days. In determining the repair priority, each operator must consider criteria such as the amount and migration of gas; the proximity of gas to buildings and subsurface structures; the extent of pavement; and soil type and conditions, such as frost cap, moisture, and natural venting. An operator must take action ahead of ground freezing or other adverse changes in venting conditions with respect to any leak which, under frozen or other adverse soil conditions, would likely allow gas to migrate to the outside wall of a building. Operators must conduct a follow-up leak investigation immediately after the repair of each below-ground Grade 2 leak and inspect every 15 days to determine that the leak has been effectively repaired, as evidenced by a gas concentration reading of 0% for a minimum of two consecutive readings.

Proposed new §8.207(d) defines a Grade 3 leak as non-hazardous at the time of detection and reasonably expected to remain non-hazardous. An operator must repair a Grade 3 leak within 36 months of detection, and re-evaluate each Grade 3 leak at least once each calendar year, not to exceed 15 months, until the leak is either repaired or re-graded. A leak requiring re-evaluation at periodic intervals includes any reading of less than 80% LEL in small, gas-associated substructures; under a street in areas without wall-to-wall paving where it is unlikely the gas could migrate to the outside wall of a building; and of less than 20% LEL in a confined space.

Proposed new §8.207(e) states the circumstances in which a follow-up inspection is not required. A follow-up inspection is not required for leak repairs completed by the replacement or insertion of an entire length of pipe or service line, or for the repair of leakage caused by excavator or third-party damage, provided a complete re-evaluation of the leak area after completion of repairs verifies that there are no further indications of leakage. The rationale for this exemption is that excavator or other third-party damage is known and repaired immediately; there is no time for gas to saturate the surrounding soil. The concentration reading would be 0% at the conclusion of the repair. Remedial measures such as lubrication of valves or tightening of packing nuts on valves which seal leaks may be considered to be routine maintenance work and do not require a follow-up inspection.

Proposed new §8.207(f) provides that, when an operator upgrades a leak to a higher grade, the time period for repair is the remaining time based on its original classification or the time allowed for repair under its new grade, whichever is less. This requirement does not apply to leaks that, at the time of discovery, an operator has classified at a lower grade pending a further, more complete investigation of the leak hazard area.

Proposed new §8.207(g) provides a table for a concise reference for leak grading and leak repair deadlines.

Proposed new §8.208 establishes the mandatory removal and replacement program, which applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192. For leaks identified on any compression coupling used to join steel pipe, each operator must either replace the leaking compression coupling or repair it using a sleeve welded over the compression coupling. For leaks identified on any compression coupling used to join plastic pipe, each operator must replace the leaking compression coupling. For any other compression coupling used to join plastic pipe that is exposed during operation and maintenance activities, each operator must determine whether the coupling is manufactured and designed to withstand pull-outs, and must replace those compression couplings used to join plastic pipe that the operator identifies as potentially susceptible to pull-outs. In addition, if an operator is unable to determine that a compression coupling was designed with two forms of resistance to pull-outs, the operator must replace the coupling. Operators must remove and replace all compression couplings at currently known service riser installations, identifiable by a meter number or street address, if they are not both manufactured and installed with secondary restraint and resistant to pull-outs. The removal and replacement of such compression couplings must be completed within two years of the effective date of this section. No later than May 31, 2008, and every six months thereafter until all compression couplings on the operator's system have been removed and replaced, each operator must file with the Commission's Safety Division a progress report showing the number of service riser installations checked, the condition of the coupling, and the total number of compression couplings replaced for that reporting period.

Mary McDaniel, P.E., Director, Safety Division, has determined that for each of the first five years the proposed new rules will be in effect, there will be no fiscal implications for state government. The proposed new rules do not require additional staff for administration or enforcement. The Commission will not incur additional costs because these additional safety requirements either will be added into the existing comprehensive safety evaluation program or handled in specialized safety programs for the review of leak surveys, leak grading, leak repair, and repairs and

replacements as separate inspections using existing staffing and other resources.

Ms. McDaniel has also determined that for each of the first five years the proposed new rules will be in effect, there will be fiscal implications for the 87 local governments (municipalities) that operate natural gas distribution systems. Based on the Commission's preliminary review of data submitted by operators of municipally owned or operated gas systems, the numbers of leaks identified and repaired annually on these systems is relatively small. For municipally owned distribution systems, the fiscal implications are likely to be minimal. For example, last year one city included on its DOT annual report a total of three leaks, all of which were eliminated during the year; there were no leaks scheduled for repair. This municipally owned system would not experience an increase in the cost of grading and repair of leaks, because there were no leaks scheduled for repair at the end of the year. Another larger, municipally owned system eliminated 210 leaks in one calendar year, which was the total number of outstanding leaks for the system. This municipality also would not experience an increase in costs associated with the repair time frames proposed in 8.207. Some municipalities did report leaks that were scheduled for repair at the end of the calendar year. These municipalities might incur additional costs because of the shorter time (six months) for repairing Grade 2 leaks. The Commission assumes that the fiscal implications for local governments that operate gas distribution systems are likely to be similar to those for operators of similarly-sized investor-owned distribution systems, as described in more detail in the following paragraphs.

Ms. McDaniel has determined that for each year of the first five years that the new rules will be in effect, the primary public benefit will be an increased level of safety for the pipeline systems by more frequent leak inspections for those systems or segments that pose the highest risk. Operators of gas distribution systems may conduct more leakage surveys in high risk areas more frequently than they do now, and will have guidelines for determining the severity of the leaks and a corresponding specific time frame for completing repairs of any leaks that are identified. Additionally, the mandatory removal and replacement program will affect an estimated 100,000 gas distribution customers because the service risers at their residences will be replaced. The increased frequency of leakage surveys, shortened time for making leak repairs, and mandatory removal and replacements will benefit the public by enhancing the safe operation of gas distribution systems and increasing the public's awareness of the safety requirements for such gas distribution systems.

Ms. McDaniel has also developed the following analysis of the probable economic cost to persons required to comply with the proposed new rules for each year of the first five years that they will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses subject to the proposed rule, project the economic impact of the rule on small businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The analysis must consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while min-

imizing adverse impacts on small businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Ms. McDaniel has determined that there will be an increased cost of compliance for all operators of gas distribution systems, both municipally owned and privately-owned, for all the proposed new rules. Commission records show that there are approximately 120 operators of gas distribution systems, of which 87 are municipally owned and operated natural gas distribution systems, 25 are privately owned and operated natural gas distribution systems, and the remaining eight are privately owned LP-gas distribution systems. Some of the 33 privately owned gas distribution systems are small businesses, and some of them may be micro-businesses or sole proprietorships. However, the Commission does not collect information--such as annual gross receipts and number of employees--that would allow the Commission to determine how many of the 33 privately owned gas distribution systems affected by this rule proposal are small businesses or micro-businesses. Therefore, the Commission has calculated the potential cost of compliance with the rule proposal based on hypothetical business entities using the following assumptions: the owner of a sole proprietorship is the sole employee; a micro-business has five employees; a small business has 50 employees; and a large business has 1,000 employees.

The development of a risk model for scheduling the frequency of leakage survey, as required by proposed new §8.206, is a one-time cost that all operators of gas distribution systems will incur. In addition, there will be annual costs for monitoring the risks within the pipeline systems in order to make changes to the model as necessary. The cost of complying with proposed new §8.206 will vary by operator depending on the risk model created by the operator and the physical characteristics of each distribution system. Many of the data items required to create a risk model are already tracked by some operators; for them, creating the risk model might require only the tabulation of those existing data. Other operators may need to add data collection fields in order to provide the requested information, which would then be fed into the risk model to determine the leakage survey frequencies. Some operators may be able to continue their current frequency of leakage surveys; others may need to conduct more frequent leakage surveys, depending on the application of the minimum risk factors stated in the proposed rule.

Ms. McDaniel estimates that the cost for an operator to create a risk model for its distribution system will range from as little as \$500 to as much as \$5,000. This estimate is based on the minimum number of risk factors stated in the proposed new rule and on the fact that much of the information required to rank systems or segments within a system using the risk model are currently available within the operator's records. The following table is a comparison of the various possible costs of creating a risk-based leak survey model using the assumptions stated above.

Figure 1: 16 TAC Chapter 8 - Preamble

In addition, the cost to conduct the leakage survey may vary because some operators will conduct the leakage surveys with company personnel while others will engage a contractor to conduct the leakage surveys. For the purpose of this proposal, however, Ms. McDaniel assumes that the cost per hour to conduct a leakage survey will be similar whether an operator uses company employees or a contractor, and that it will take the same amount of time to inspect a specified length of pipe regardless of who is conducting the leakage survey. Ms. McDaniel also assumes, generally, that an individual, small business, or micro-business operator will have a smaller system (fewer miles of pipe) than a large business operator. Based on that assumption, it follows that the total cost of compliance will be lower for an individual, small business, or micro-business operator than for a large business operator.

Based on information from gas distribution system operators, the average cost to conduct a leakage survey using company employees, including all the overhead, is \$40 per hour. Assuming the survey crew finds no leaks, the time for conducting the leakage survey would simply be the time to walk the line with the flame ionization unit or to use a mobile unit. A walking survey crew can cover one to two miles per hour and a driving crew three to four miles per hour. On average, two miles of pipe can be leak-surveyed in one hour, at an average cost of \$20 per mile. The following chart shows the cost per employee for conducting one leak survey for various sizes of systems on which no leaks are found:

Figure 2: 16 TAC Chapter 8 - Preamble

Based on information from gas distribution system operators, the average cost to conduct a leakage survey using contract workers is \$125 per hour. Assuming the survey crew finds no leaks, the time for conducting the leakage survey would simply be the time to walk the line with the flame ionization unit or to use a mobile unit. A walking survey crew can cover one to two miles per hour and a driving crew three to four miles per hour. On average, two miles of pipe can be leak-surveyed in one hour, at an average cost of \$67.50 per mile. The following chart shows the cost per employee for conducting one leak survey for various sizes of systems on which no leaks are found using contract workers:

Figure 3: 16 TAC Chapter 8 - Preamble

Whether the leakage survey is conducted by employees or contract workers, if the leakage survey crew finds any leak during the survey, the crew must stop and grade the leak. The average time to grade a leak is 30 minutes, based on the time necessary to pinpoint the leak and record the data. However, this time can extend up to several hours if there is a large migration pattern. Obviously any time a leak is found, the cost for surveying and grading increases according to the time it takes to locate and evaluate the leak.

Proposed new §8.206 also may increase the operating costs of the system because of an increased frequency for conducting leakage surveys. For example, it may cost an operator \$1,000 to conduct a leakage survey, which the operator may do on a five-year interval using the current federal guidelines for compliance. If that operator develops a risk model pursuant to proposed new §8.206 and determines that the pipeline falls into a high risk category based on location and pipe material and thus requires an annual leakage survey, the operator will incur that \$1,000 cost every year instead of once every five years. In other words, over the same five-year time frame, the operator

will spend \$5,000 to conduct leakage surveys rather than the \$1,000 it now spends.

Proposed new §8.207 establishes a shorter time within which certain leaks must be repaired. While there is no change in the time for repairing Grade 1 leaks, the proposed shorter repair time for Grade 2 and Grade 3 leaks may cause some operators an increase in costs. The Safety Division's inspection of these distribution systems shows that the proposed shorter times will not affect all operators, because some of them already fix leaks within time frames that are the same as or shorter than those the Commission is proposing in this rulemaking. It is possible that the increased frequency of leakage surveys proposed in §8.206 may identify more leaks that will need repair, which may also increase the operating costs.

With respect to compliance with proposed new leak grading and leak repair requirements in §8.207, and the requirement to repair or replace any compression coupling that is found to be leaking in proposed new §8.208, the following assumptions apply. For 2005, the average hourly wage for experienced workers employed by gas distribution systems was \$44, based on information from the Texas Workforce Commission. Some operators have no leaks; those operators will experience no increased cost of compliance because of the shortened times for leak repair. Any operator that repairs leaks on a large system might experience an increased cost to repair leaks within the new time frames. The actual dollar amount cannot be determined; leak repairs can cost as little as \$50 or up to thousands of dollars, depending on the nature of the leak. Even though the Grade 2 and Grade 3 leaks affected by the proposed new repair time lines are not as severe as the Grade 1 leaks that must be repaired immediately, they may also require costly repairs due to the location of the pipe and the nature of the leak. Under proposed new §8.208, all compression couplings found to be leaking must be repaired or replaced, regardless of the grade of the leak.

The following table shows a comparison of the cost per employee for repairing a hypothetical increased number of leaks at a minimum of \$50 per repair in compliance with the new leak repair times in proposed new §8.207:

Figure 4: 16 TAC Chapter 8 - Preamble

The service riser removal and replacement program proposed in §8.208 applies to a limited number of installations in Texas, an estimated 100,000. Based on information provided by distribution system operators, Ms. McDaniel estimates that the minimum cost of replacing one service riser is \$300 per installation, which would result in a total cost of compliance for the industry of \$30 million dollars. Under an accelerated replacement program, however, the cost per installation can be up to \$450. The following table shows a comparison of the range of costs per employee for replacing a number of service risers using the \$300 and \$450 range:

Figure 5: 16 TAC Chapter 8 - Preamble

In preparing this rulemaking proposal, the Commission considered whether there were any alternative methods for achieving the purpose of this proposal. The Commission could have proposed no changes in the pipeline safety regulations and continued having staff strongly encourage operators to use the risk-based leakage survey, grading, and repair model. The GPTC guide has been widely available in the industry for many years, and although some operators have used it, others have not. The information available to the Commission shows, however, that voluntary, piecemeal adoption of the risk-based model produces

inconsistent and unpredictable qualities of system integrity, and therefore is inadequate to ensure the safety and welfare of gas distribution system customers and others. The Commission has concluded that requiring all gas distribution system operators to meet consistent minimum standards for system integrity through the use of a risk-based model for leakage surveys, grading, and repair is essential to the goal of ensuring the health, safety, and environmental and economic welfare of the State. Minimizing any adverse impacts on small businesses is inconsistent with this goal. Safety standards for gas distribution systems, which are located in the most densely populated areas of the State, should not be made any less stringent merely because the owner or operator of the system is an individual, a small business, or a micro-business.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m., Tuesday, February 5, 2008, which is 60 days after expected publication in the *Texas Register*. Comments should refer to GUD No. 9766. In addition, pursuant to Texas Government Code, §2001.029, there will be a public comment hearing on this rule proposal, at 9:00 a.m., Tuesday, January 8, 2008, in Room 1-111 of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The Commission has determined that this comment period and the public comment hearing provide interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, as required by Texas Government Code, §2001.029(a). In addition, although the proposal will not be published in the *Texas Register* sooner than Friday, December 7, 2007, the event that initiates the formal comment period, the main components of the rule proposals were deliberated by the Commission in open meeting on November 6, 2007, and the text of this rule proposal, including the preamble, will be posted on the Commission's web site no later than Wednesday, November 21, 2007, which allows interested persons more than two additional weeks to review and draft comments on the proposal. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mary McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at <http://www.rrc.state.tx.us/rules/proposed.html>.

The Commission proposes the new rules under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*; and 49 CFR Part 192, which establishes minimum safety standards for the transportation of natural and other gas by pipeline.

Texas Natural Resources Code, §§81.051 and 81.052; Texas Utilities Code, §§121.201 - 121.211; 49 United States Code Annotated, §§60101, *et seq.*; and 49 CFR part 192 are affected by the proposed new rules.

Statutory authority: Texas Natural Resources Code, §§81.051 and 81.052; Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on November 20, 2007.

§8.206. Risk-Based Leak Inspection Program.

(a) This section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192.

(b) No later than six months from the effective date of this section, each operator shall have completed and submitted to the Commission on a system basis or on a segment within each system basis a risk-based determination of leak survey frequency that complies with the requirements of this section.

(c) Each operator shall create a risk model on which to base its leak inspection program to identify those systems or segments within systems that pose the greatest hazard and thus will be inspected for leaks more frequently. The risk model shall identify risk factors and determine the degree of hazard associated with those risk factors. The operator shall establish the leak survey frequency based on the degree of hazard for each system or segment within a system.

(d) Each operator shall periodically re-evaluate the pipeline system and update its leak survey inspection program to address any changes that may be identified through the monitoring of the pipeline system in accordance with the requirements imposed by 49 CFR §192.613 (relating to Continuing Surveillance). Each operator shall update its leak survey inspection program at least every three years and within 30 days in the following circumstances:

(1) a new system or segment being put into operation; or

(2) if, for any system or segment, there has been a ten percent increase in the number of leaks being upgraded or a ten percent increase in the number of unrepaired leaks.

(e) The minimum frequency for leakage surveys is established in 49 CFR §192.723(b)(1) and (2), which read as follows:

(1) A leakage survey with leak detector equipment must be conducted in business districts, including tests of the atmosphere in gas, electric, telephone, sewer, and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at intervals not exceeding 15 months, but at least once each calendar year.

(2) A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months. However, for cathodically unprotected distribution lines subject to 49 CFR §192.465(e) on which electrical surveys for corrosion are impractical, a leakage survey must be conducted at least once every 3 calendar years at intervals not exceeding 39 months.

(f) Based on the particular circumstances and conditions, an increased frequency for conducting leakage surveys may be warranted. Surveys shall be conducted more frequently in those areas with the greatest potential for leakage and where leakage could be expected to create a hazard. Each operator shall consider the following factors in establishing an increased frequency of leakage surveys:

(1) pipe location, which means proximity to buildings or other structures and the type and use of the buildings and proximity to areas of concentrations of people;

(2) composition and nature of the piping system, which means the age of the pipe, materials, type of facilities, operating pressures, leak history records, and other studies;

(3) the corrosion history of the pipeline, which means known areas of significant corrosion or areas where corrosive environments are known to exist, cased crossings of roads, highways, railroads, or other similar locations where there is susceptibility to unique corrosive conditions;

(4) environmental factors that affect gas migration, which means conditions that could increase the potential for leakage or cause leaking gas to migrate to an area where it could create a hazard, such as extreme weather conditions or events (significant amounts or extended periods of rainfall, extended periods of drought, unusual or prolonged freezing weather, hurricanes, etc.), particular soil conditions, unstable soil or areas subject to earth movement, subsidence, or extensive growth of tree roots around pipeline facilities that can exert substantial longitudinal force on the pipe and nearby joints; and

(5) any other condition known to the operator that has significant potential to initiate a leak or to permit leaking gas to migrate to an area where it could result in a hazard, which includes construction activity near the pipeline, wall-to-wall pavement, trenchless excavation activities (e.g., boring), blasting, large earth-moving equipment, heavy traffic, increase in operating pressure, and other similar activities or conditions.

(g) The assignment of inspection priorities is based on the degree of hazard associated with the risk factors assigned to the pipeline system or segments within a system. The determination of leak survey frequency is determined by classifying each pipeline segment based on its degree of hazard associated with each risk factor. Each operator shall establish its own risk ranking for pipeline segments to determine the frequency of leakage surveys. Based on a ranking from high to low, each operator shall schedule leak inspections for a given pipeline system or segment within a system on a time interval necessary to address the risks. The time interval may range from quarterly to every five years.

§8.207. Leak Grading and Repair.

(a) Purpose and qualifications.

(1) The purpose of the leak grading system is to determine the degree or extent of the potential hazard which results from gas leakage and to prescribe remedial actions. Each operator shall promptly respond to any notification of a gas leak or gas odor or any notification of damage to facilities by excavators or other outside sources.

(2) Each operator shall ensure that leak grading is made only by those individuals who possess training, experience, and knowledge in the field of leak classification and investigation, including extensive association with actual leakage work. The judgment of these individuals, based upon all pertinent information and a complete leakage investigation at the scene, shall form the basis for the leak grade determination. Each operator shall ensure that its leak detection equipment is properly calibrated.

(b) Grade 1 leaks.

(1) A Grade 1 leak is an existing or probable hazard to persons or property and requires the operator to take action immediately to eliminate the hazard and make repairs. A Grade 1 leak includes but is not limited to:

(A) any leak which, in the judgment of operating personnel at the scene, is regarded as an immediate hazard;

(B) escaping gas that has ignited;

(C) any indication of gas, which has migrated into or under a building, or into a tunnel;

(D) any reading at the outside wall of a building, or where gas would likely migrate to an outside wall of a building;

(E) any reading of 80% lower explosive limit (LEL) or greater in a confined space;

(F) any reading of 80% LEL or greater in small substructures, other than gas associated substructures, from which gas would likely migrate to the outside wall of a building; or

(G) any leak that can be seen, heard, or felt, and which is in a location that may endanger the general public or property.

(2) A Grade 1 leak requires that the operator take prompt action to remove the hazardous conditions. The prompt action may require one or more of the following:

(A) implementing an emergency plan (49 CFR §192.615);

(B) evacuating premises;

(C) blocking off an area;

(D) rerouting traffic;

(E) eliminating sources of ignition;

(F) venting the area by removing manhole covers, barholing, installing vent holes, or other means;

(G) stopping the flow of gas by closing valves or other means; or

(H) notifying emergency responders.

(3) Each operator shall conduct a follow-up leak investigation immediately after the repair of each Grade 1 leak and shall inspect daily to determine that the leak has been effectively repaired, as evidenced by a gas concentration reading of 0% for a minimum of three consecutive days.

(c) Grade 2 leaks.

(1) A Grade 2 leak is non-hazardous at the time of detection, but requires the operator to schedule repair based on probable future hazard. A Grade 2 leak, because of its location and magnitude, can be scheduled for repair on a normal routine basis with periodic reinspection as necessary. An operator shall repair or clear a Grade 2 leak no later than six months from the date the leak was reported, unless the leak meets the criteria set forth in paragraphs (2)-(4) of this subsection. Each operator shall re-evaluate every Grade 2 leak at least once every 30 days until repaired or cleared.

(2) Each operator shall repair within 90 days of detection any leak:

(A) with a reading of 40% LEL, or greater, under a sidewalk in a wall-to-wall paved area that does not qualify as a Grade 1 leak;

(B) with a reading of 100% LEL, or greater, under a street in a wall-to-wall paved area that has significant gas migration and does not qualify as a Grade 1 Leak;

(C) with a reading less than 80% LEL in small substructures (other than gas associated substructures) from which gas would likely migrate creating a probable future hazard;

(D) with a reading between 20% LEL and 80% LEL in a confined space;

(E) with a reading on a pipeline operating at 30 percent SMYS, or greater, in a class 3 or 4 location, which does not qualify as a Grade 1 leak;

(F) with a reading of 80% LEL, or greater, in gas associated substructures; and

(G) which, in the judgment of operating personnel at the scene, is of sufficient magnitude to justify scheduled repair.

(3) Grade 2 leaks vary greatly in degree of potential hazard. Some Grade 2 leaks, when evaluated by the criteria in this subsection may require a scheduled repair within the next five working days. Others will require repair within 30 days. In determining the repair priority, each operator shall consider criteria such as the following:

(A) the amount and migration of gas;

(B) the proximity of gas to buildings and subsurface structures;

(C) the extent of pavement; and

(D) soil type and conditions, such as frost cap, moisture, and natural venting.

(4) Each operator shall take action ahead of ground freezing or other adverse changes in venting conditions with respect to any leak which, under frozen or other adverse soil conditions, would likely allow gas to migrate to the outside wall of a building.

(5) Each operator shall conduct a follow-up leak investigation immediately after the repair of each below-ground Grade 2 leak and shall inspect every 15 days to determine that the leak has been effectively repaired, as evidenced by a gas concentration reading of 0% for a minimum of two consecutive readings.

(d) Grade 3 leaks.

(1) A Grade 3 leak is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous. Each operator shall repair a Grade 3 leak within 36 months of detection.

(2) Each operator shall re-evaluate each Grade 3 leak once each calendar year not to exceed 15 months, until the leak is either repaired or re-graded. A leak requiring re-evaluation at periodic intervals includes any reading:

(A) of less than 80% LEL in small, gas-associated substructures;

(B) under a street in areas without wall-to-wall paving where it is unlikely the gas could migrate to the outside wall of a building; and

(C) of less than 20% LEL in a confined space.

(e) Follow-up inspections.

(1) Follow-up inspections are not required for leak repairs completed by the replacement or insertion of an entire length of pipe or service line, or for the repair of leakage caused by excavator or third-party damage, provided a complete re-evaluation of the leak area after completion of repairs verifies that no further indications of leakage exist.

(2) Remedial measures such as lubrication of valves or tightening of packing nuts on valves which seal leaks may be considered to be routine maintenance work and do not require a follow-up inspection.

(f) Upgrading. When an operator upgrades a leak to a higher grade, the time period for repair is the remaining time based on its original classification or the time allowed for repair under its new grade, whichever is less. This requirement does not apply to leaks that, at the time of discovery, an operator has classified at a lower grade pending a further, more complete investigation of the leak hazard area.

(g) Table. The following table provides a concise reference for leak grading and leak repair deadlines.
Figure: 16 TAC §8.207(g)

§8.208. Mandatory Removal and Replacement Program.

(a) This section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192.

(b) For leaks identified on any compression coupling used to join steel pipe, each operator shall either replace the leaking compression coupling or repair it using a sleeve welded over the compression coupling.

(c) For leaks identified on any compression coupling used to join plastic pipe, each operator shall replace the leaking compression coupling.

(d) For any other compression coupling used to join plastic pipe that is exposed during operation and maintenance activities, each operator shall determine whether the coupling is manufactured and designed to withstand pull-outs. Each operator shall replace those compression couplings used to join plastic pipe that the operator identifies as potentially susceptible to pull-outs.

(e) If an operator is unable to determine that a compression coupling was designed with two forms of resistance to pull-outs, the operator shall replace the coupling. Each operator shall remove and replace all compression couplings at currently known service riser installations, identifiable by a meter number or a street address, if they are not both:

(1) manufactured and installed with secondary restraint;
and

(2) resistant to pull-outs.

(f) Each operator shall complete the removal and replacement of such compression couplings within two years of the effective date of this section.

(g) No later than May 31, 2008, and every six months thereafter until all compression couplings on the operator's system have been removed and replaced, each operator shall file with the division a progress report showing the number of service riser installations checked, the condition of the coupling, and the total number of compression couplings replaced for that reporting period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705769

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 475-1295



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER K. PROVISIONS FOR SCHOLARSHIPS FOR STUDENTS GRADUATING IN THE TOP 10 PERCENT OF THEIR HIGH SCHOOL CLASS

19 TAC §§22.196 - 22.202

The Texas Higher Education Coordinating Board proposes new §§22.196 - 22.202 concerning Provisions for Scholarships for Students Graduating in the Top 10 Percent of Their High School Class. Specifically, Article III of the General Appropriations Act of the 80th Texas Legislature, Special Provisions Relating Only to State Agencies of Higher Education, §55, Subsection 4, Higher Education Performance Incentive Initiative (III-234), allows the Coordinating Board to develop a program to provide scholarships for undergraduate students who have graduated in the top 10 percent of their high school graduating class from an accredited Texas high school. Scholarships will be awarded for the 2008 - 2009 academic year if funding is available. The new sections will establish definitions, identify the eligibility requirements for the scholarships, and set the award amounts and selection criteria.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner of Business and Finance, Texas Higher Education Coordinating Board, has determined that for each year of the first five years the amendments are in effect there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the sections will be more scholarship opportunities for eligible students. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority, and Article III of the General Appropriations Act of the 80th Texas Legislature.

The new sections affect Article III of the General Appropriations Act of the 80th Texas Legislature, §55, Subsection 4.

§22.196. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in Article III of the General Appropriations Act of the 80th Texas Legislature, Special Provisions Relating Only to State Agencies of Higher Education, §55, Subsection 4, Higher Education Performance Incentive Initiative (III-234).

(b) Purpose. The purpose of this program is to encourage outstanding high school graduates who graduate within the top 10 percent of their high school graduating classes to attend a public university in Texas.

§22.197. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(3) Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(4) Financial need--The cost of attendance less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(5) General Academic Teaching Institution--A public institution of higher education as listed in Texas Education Code Chapter 61, §61.003(3).

(6) Recommended or Advanced High School Program--The high school college preparatory curriculum required under §28.025(a) of the Texas Education Code.

(7) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter X, of this title (relating to Determining Residence Status). Nonresident students eligible to pay resident tuition rates are not included.

(8) Scholarship--An award of gift aid that does not have to be repaid by the student or earned through service or performance.

§22.198. Relevant Institutions.

The provisions of these rules apply to persons attending any general academic teaching institution in Texas.

§22.199. Eligible Students.

To qualify for an award through this subchapter, a student must:

(1) have graduated from an accredited high school in Texas while ranked in the top 10 percent of his or her graduating class,

(2) have completed the recommended or advanced curriculum in high school or its equivalent,

(3) show financial need of \$5,000 or more,

(4) enroll in a general academic teaching institution in Texas within 16 months of high school graduation, and

(5) be a Texas resident.

§22.200. Award Amounts and Recipient Selection.

(a) Funding. The statewide aggregate of funds awarded may not exceed the amount appropriated for that purpose.

(b) Award Amount. No award received through this program may exceed \$5,000. This is a one-time award only. No additional awards will be made to continuing students.

(c) Recipient Selection. Each high school may submit applications from students who are determined to be ranked in the top 10 percent of their high school graduating class based on the students ranking at the end of his or her junior year. If funding is limited such that the Board cannot fund all applications submitted by accredited high schools, the Board will select recipients on the basis of the higher education grade point average (GPA) calculation as provided by §51.807 of the Texas Education Code.

§22.201. Dissemination of Information and Rules.

The Board is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

(1) Application forms and instructions developed by the Board will be distributed primarily through school district offices throughout the state. The Board will also provide forms to financial aid offices of general academic teaching institutions and students may request the forms directly from the Board.

(2) The application is to be completed and signed by the school or school district authorized officer, who shall forward the application to the Coordinating Board.

(3) The deadline for submitting applications for the fall-spring terms will be March 15. Applications received after that deadline will be given consideration only if funds remain available after all applications received by the deadline have been processed.

(4) As soon as possible after processing applications, the Board will notify the relevant students and high schools of their awards. Institutions will be able to verify approval or a student's award through the Board's web site.

§22.202. Award Amounts and Processing Cycle.

(a) Amounts. Students receiving awards through the Top 10 Percent Program shall be issued a certificate indicating the amount of the award.

(b) Form of Award--Institutional Reimbursement. Institutions should exempt recipients from the payment of such charges and then request reimbursement from the Board.

(c) Requesting Reimbursements. To request reimbursement for student awards, institutions must complete and submit a Request for Reimbursement Form designed and distributed by the Board.

(d) Disbursements by the Board. The Board will process institutional Requests for Reimbursement at least once a month and will subsequently have appropriate amounts transferred to institutions by the State Comptroller's office. Such funds are to be used by an institution either to reimburse itself (if it exempted a student from the payment of the relevant charges) or to reimburse students for the relevant charges they paid to the institution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705746

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: January 24, 2008
For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER F. ADMINISTRATION

22 TAC §131.81

The Texas Board of Professional Engineers proposes an amendment to §131.81, relating to Definitions. The proposed amendment includes two terms that were not part of the definitions, previously. This rule change will be in conjunction with amendments to §§137.31, 137.33, 137.35, 137.37, and 139.35, which are contemporaneously proposed elsewhere in this issue of the *Texas Register*.

The proposed amendment adds definitions for electronic seal and electronic signature as they are used in the Texas Engineering Practice Act. This change relates to the other rule changes and will allow an engineer to scan their signature and affix it to documents. This modification is intended to assist engineers in transmitting work electronically.

Wesley Smith, P.E., Engineering Specialist with the Texas Board of Professional Engineers, has determined that, for the first five-year period the proposed amendment is in effect, there are no additional fiscal implications for the state or local government as a result of enforcing or administering the section as amended. The Board staff has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule proposal. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Smith also has determined that, for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment is a clarification of the sealing and signing of documents under the Texas Engineering Practice Act.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code, §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code, §1001.302, which outlines the minimum requirements for

licensure; and §1001.303, which lists the requirements for an application for licensure.

No other statutes, articles, or codes are affected by the proposed amendment.

§131.81. Definitions.

In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a particular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

(1) ABET--ABET, Inc., formerly the Accreditation Board for Engineering and Technology.

(2) Act--The Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code.

(3) Advisory Opinion--A statement of policy issued by the board that provides guidance to the public and regulated community regarding the board's interpretation and application of Chapter 1001, Texas Occupations Code, referred to as the Texas Engineering Practice Act "Act" and/or board rules and that do not have the force and effect of law.

(4) Agency or Board--Texas Board of Professional Engineers.

(5) Applicant--A person applying for a license to practice professional engineering or a firm applying for a certificate of registration to offer or provide professional engineering services.

(6) Application--The forms, information, and fees necessary to obtain a license as a professional engineer or a certificate of registration for a firm.

(7) Certificate of Registration--The annual certificate issued by the board to a firm offering or providing professional engineering services to the public in Texas.

(8) Complainant--Any party who has filed a complaint with the board against a person or entity subject to the jurisdiction of the board.

(9) Contested case--A proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing pursuant to the Administrative Procedure Act, Chapter 2001, Texas Government Code.

(10) Direct supervision--The control over and detailed professional knowledge of the work prepared under the engineer's supervision. The degree of control should be such that the engineer personally makes engineering decisions or personally reviews and approves proposed decisions prior to their implementation. The engineer must have control over the decisions either through physical presence or the use of communications devices.

(11) EAC/ABET--Engineering Accreditation Commission of ABET.

(12) EAOR number--An engineering advisory opinion request file number assigned by the executive director to a pending advisory opinion in accordance with this chapter.

(13) Electronic Seal--For the purposes of this Chapter, an electronic seal is a digital representation of an engineer's seal including, but not limited to, digital scans of physical seals.

(14) Electronic Signature--For the purposes of this Chapter, an electronic signature is a digital representation of an engineer's

signature including, but not limited to, digital scans of physical signatures.

(15) [(43)] Engineering--The profession in which a knowledge of the mathematical, physical, engineering, and natural sciences gained by education, experience, and practice is applied with judgment to develop ways to utilize, economically, the materials and forces of nature for the benefit of mankind.

(16) [(44)] Firm--Any entity that engages or offers to engage in the practice of professional engineering in this state. This includes sole practitioners, sole proprietorships, firms, co-partnerships, corporations, partnerships, or joint stock associations.

(17) [(45)] Good Standing--(License or Registration)--A license or registration that is current, eligible for renewal, and has no outstanding fees or payments.

(18) [(46)] Gross negligence--Any willful or knowing conduct, or pattern of conduct, which includes but is not limited to conduct that demonstrates a disregard or indifference to the rights, health, safety, welfare, and property of the public or clients. Gross negligence may result in financial loss, injury or damage to life or property, but such results need not occur for the establishment of such conduct.

(19) [(47)] Incompetence--An act or omission of malpractice which may include but is not limited to recklessness or excessive errors, omissions or failures in the license holder's record of professional practice; or an act or omission in connection with a disability which includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in the provision of professional services.

(20) [(48)] License--The legal authority granting the holder to actively practice engineering upon the payment of the annual renewal fee. Also, a certificate issued by the board showing such authority.

(21) [(49)] License Holder--Any person whose license to practice engineering is current.

(22) [(20)] Licensure--The granting of an original certificate and license to an individual.

(23) [(21)] Misconduct--The violation of any provision of the Texas Engineering Practice Act and board rules. A conviction of a felony or misdemeanor that falls under the provisions of Texas Occupations Code, Chapter 53, will also be misconduct under the Texas Engineering Practice Act.

(24) [(22)] NAFTA--North American Free Trade Agreement. NAFTA is related to the practice and licensure of engineering through mutual recognition of registered/licensed engineers by jurisdictions of Canada, Texas, and the United Mexican States.

(25) [(23)] NCEES--National Council of Examiners for Engineering and Surveying.

(26) [(24)] Party--Each person or agency named or admitted as a party to a proceeding under the Administrative Procedure Act.

(27) [(25)] Person--Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(28) [(26)] Petitioner--Any party requesting the adoption of a rule by the Board.

(29) [(27)] Pleading--Written allegations filed by parties concerning their respective claims.

(30) [(28)] Professional engineering--Professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

(31) [(29)] Professional engineering services--Services which must be performed by or under the direct supervision of a licensed engineer and which meet the definition of the practice of engineering as defined in the Act, §1001.003. A service shall be conclusively considered a professional engineering service if it is delineated in that section; other services requiring a professional engineer by contract, or services where the adequate performance of that service requires an engineering education, training, or experience in the application of special knowledge or judgment of the mathematical, physical or engineering sciences to that service shall also be conclusively considered a professional engineering service.

(32) [(30)] Protestant--Any party opposing an application or petition filed with the Board.

(33) [(31)] Recognized institution of higher education--An institution of higher education as defined in §61.003, Education Code; or in the United States, an institution recognized by one of the six regional accrediting associations, specifically, the New England Association of Schools and Colleges, the North Central Association Commission on Accreditation and School Improvement, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, or the Middle States Association of Colleges & Schools; or, outside the United States, an institution recognized by the Ministry of Education or the officially recognized government education agency of that country.

(34) [(32)] Respondent--Any party against whom any complaint has been filed with the Board.

(35) [(33)] Responsible charge--An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(36) [(34)] Responsible supervision--An earlier term synonymous with the term "direct supervision;" the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(37) [(35)] Sole Practitioner--A firm that consists of an individual license holder with no other employees.

(38) [(36)] Supervision of Engineering Construction--As used in §1001.407 of the Act, includes but is not limited to the periodic observation of materials and completed work to determine general compliance with plans, specifications and design and planning concepts. Supervision of engineering construction does not include the construction means and methods; responsibility for the superintendence of construction processes, site conditions, operations, equipment, personnel; or the maintenance of a safe place to work or any safety in, on or about the site.

(39) [(37)] TAC/ABET--Technology Accreditation Commission of ABET.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 26, 2007.

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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723



CHAPTER 133. LICENSING

SUBCHAPTER E. EXPERIENCE

22 TAC §133.43

The Texas Board of Professional Engineers (board) proposes an amendment to §133.43, relating to Experience Evaluation. The proposed amendment is related to determination of engineering experience acceptable for licensure.

The proposed rule would clarify the requirements for counting experience credit gained prior to receiving a qualifying degree and would limit the claimed experience gained in this manner to a total of two years.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that, for the first five-year period the proposed amendment is in effect, there are no additional fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule proposal. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that, for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment is a clarification of the licensure process and consistency in the evaluation of licensure applications.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code, §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, and Occupations Code, §1001.302, which requires that an applicant meet educational and experience requirements as determined by the Board.

No other statutes, articles, or codes are affected by the proposed amendment.

§133.43. Experience Evaluation.

(a) The board shall evaluate the nature and quality of the experience found in the supplementary experience record and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to

be placed in responsible charge of engineering work of a similar character.

(1) Engineering work shall be satisfactory to the board and, therefore, considered by the board to be creditable engineering experience for the purpose of licensure if it is of such a nature that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such work must be fully described in the supplementary experience record. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

(B) development or optimization of plans and specifications for engineering works, products, or systems;

(C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;

(D) planning the use or alteration of land, water, or other resources;

(E) engineering for program management and for development of operating and maintenance manuals;

(F) engineering for construction, or review of construction;

(G) performance of engineering surveys, studies, or mapping;

(H) engineering for materials testing and evaluation;

(I) expert engineering testimony;

(J) any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance; and

(K) the teaching of engineering subjects by a person who began teaching prior to September 1, 2001.

(2) In the review of engineering experience, the board shall consider additional elements unique to the history of the applicant. Such elements should include, at a minimum:

(A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;

(B) whether the quality of the engineering work shows minimum technical competency;

(C) whether the submitted materials indicate good character and reputation;

(D) whether the experience was gained in accordance with the provisions of the Act;

(E) whether the experience was gained in one dominant branch;

(F) whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice; and

(G) whether short engagements have had an impact upon professional growth. [; and]

~~{(H)}~~ experience gained in relation to or concurrent with the applicant's education. Experience claimed prior to an applicant's receiving a conferred degree must:

~~{(i)}~~ be substantiated in the supplementary experience record;

~~{(ii)}~~ be accounted for proportionally to a standard 40-hour work week, if it was part-time employment; and

~~{(iii)}~~ reflect that, at the time the experience was gained, the applicant:

~~{(I)}~~ had successfully passed junior and senior level engineering courses and applied that engineering and knowledge in the claimed experience; or

~~{(II)}~~ received sufficient education and training under the supervision of an engineer.

(3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:

(A) the experience is gained during an engagement longer than three months in duration;

(B) the experience, when taken as a whole, meets the minimum time;

(C) the experience is not anticipated and has actually been gained at the time of application;

(D) the experience includes at least two years of experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice;

(E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment claimed.

(b) Experience credit may be granted for experience gained prior to an applicant's receiving a conferred degree per §133.31 of this chapter (relating to Educational Requirement for Applicants). Experience gained in this manner is limited to a total of two years, and must:

(1) be substantiated in the supplementary experience record and a reference statement provided for the experience;

(2) be accounted for proportionally to a standard 40-hour work week, if it was part-time employment; and

(3) reflect that, at the time the experience was gained, the applicant had passed junior and/or senior level engineering or related engineering science courses and applied relevant engineering knowledge in the claimed experience.

(c) [(b)] One year of experience credit may be granted for each post-baccalaureate engineering degree earned by an applicant, provided:

(1) the applicant has a baccalaureate degree in engineering; and

(2) the post-baccalaureate degree is from an engineering program where either the graduate or undergraduate degree in the same discipline is accredited or approved by one of the organizations listed in §133.31(a)(1) of this chapter (concerning Educational Requirements for Applicants). Experience credit for all post-baccalaureate degrees is limited to a total of two years.

(d) [(e)] Engineering Educators applying for a waiver of examinations under §133.69 of this chapter (relating to Waiver of Ex-

aminations) will not receive additional experience credit pursuant to subsection (c) [(b)] of this section.

(e) [(d)] Experience gained in conjunction with or in relation to earning a post-baccalaureate degree, such as research or teaching assistant work, will not be credited in addition to experience credited pursuant to subsection (c) [(b)] of this section.

(f) [(e)] For Engineering Educator applicants applying under §133.25 of this chapter (relating to Applications from Engineering Educators), other acceptable creditable engineering experience may include, but is not limited to, scholarly activity such as publishing papers in technical and professional journals; making technical and professional presentations; publishing books and monographs; performing sponsored research; reporting on research conducted for sponsors; supervising research of undergraduate and graduate students, postdoctoral fellows, or other employees; providing counseling, guidance, and advisement for engineering students; and performing certain other types of formal or informal functions in higher education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 26, 2007.

TRD-200705856

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

The Texas Board of Professional Engineers (board) proposes an amendment to §133.69, relating to Waiver of Examinations. The proposed amendment is related to determination of engineering experience acceptable for licensure.

The proposed rule change would permit a former Texas license holder who was previously licensed without one or more examinations to re-apply via the waiver process.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that, for the first five-year period the proposed amendment is in effect, there are no additional fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There may be a positive fiscal impact to individuals required to comply with the rule proposal as they would not be required to register for one or more examinations. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that, for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of the licensure process and consistency in the evaluation of licensure applications.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code, §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code, §1001.305, which permits the board to waive the examination requirements for licensure; and Occupations Code, §1001.353, which requires a person whose Texas license has expired for two years or more to re-apply under the current law and rules.

No other statutes, articles, or codes are affected by the proposed amendment.

§133.69. Waiver of Examinations.

(a) - (b) (No change.)

(c) Waiver of Principles and Practice of Engineering Examination. Applications for a waiver of the principles and practice of engineering examination will only be accepted from persons who meet the requirements of this subsection.

(1) Currently Licensed in U.S. State or Territory or Former Texas License Holder: An applicant who is applying for a standard license and is currently licensed and in good standing in any U.S. state or territory, or a former Texas license holder applying under §133.23 of this chapter, shall:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter;

(2) Currently Licensed in Canada or United Mexican States: An applicant applying for a temporary comity license via NAFTA shall meet the requirements of §133.11(3) of this chapter, and:

(A) meet the educational requirements of §1001.302(a)(1)(A) of the Act and have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the educational requirements of §1001.302(a)(1)(B) of the Act and have 16 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter;

(3) Engineering Educator:

(A) meet the requirements of §133.25(a) and §133.25(b)(1) of this chapter and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least six years and began teaching engineering prior to September 1, 2001;

(ii) at least six years of experience consisting of a combination of EAC/ABET teaching experience or other creditable en-

gineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least four years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter; or

(B) meet the requirements of §133.25(a) and §133.25(b)(2) of this chapter and have:

(i) taught in an EAC/ABET-accredited or -approved program for at least eight years and began teaching engineering prior to September 1, 2001;

(ii) at least eight years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience, as evaluated by the board under §133.43 of this chapter and began teaching engineering prior to September 1, 2001; or

(iii) at least six years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter.

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §137.31

The Texas Board of Professional Engineers (board) proposes an amendment to §137.31, relating to Seal Specifications. The proposed amendment includes allowing the use of electronic files. This rule change will be in conjunction with amendments to §§131.81, 137.33, 137.35, 137.37, and 139.35, which are contemporaneously proposed elsewhere in this issue of the *Texas Register*. The proposed rule adds language to allow engineers to use an electronic seal and an electronic signature for sealing their work as the procedures are described in the Texas Engineering Practice Act.

Wesley Smith, P.E., Engineering Specialist with the Texas Board of Professional Engineers has determined that, for the first five-year period the proposed amendment is in effect, there are no additional fiscal implications for the state or local government as a result of enforcing or administering the section as amended. The board staff has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule proposal. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Smith also has determined that, for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment is a more flexible use of electronic seals and signatures under the Texas Engineering Practice Act.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code, §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code, §1001.302, which outlines the minimum requirements for licensure; and §1001.303 which lists the requirements for an application for licensure.

No other statutes, articles, or codes are affected by the proposed amendment.

§137.31. Seal Specifications.

(a) Upon issuance of a license, each license holder is required to obtain a seal under the requirements of §133.97 of this title (relating to Issuance of License) and submit an impression of the seal or an electronic seal, and an original or an electronic signature to the board for board records.

(b) All physical seals obtained and used by license holders shall be capable of leaving a permanent ink or impression attached to ~~[representation on]~~ the engineering work. ~~[.] The physical and electronic seals shall be of the design illustrated in this paragraph. The physical seals [, and] may be one of two different sizes:~~

(1) a pocket seal (the size commercially designated as 1-5/8-inch seal), or

(2) a desk seal (commercially designated as a two-inch seal).

Figure: 22 TAC §137.31(b)(2) (No change.)

(c) Electronic ~~[Computer-generated]~~ seals may be of a reduced size provided that the engineer's name and number are clearly legible.

(d) All seals obtained and used by license holders shall contain any given name or initial combination with the surname as currently listed with the Board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination.

(e) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas is prohibited.

(f) When signing an engineering work, the engineer may ~~[shall]~~ utilize the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations). ~~[Signature reproductions, including but not limited to rubber stamps or computer generated signatures (i.e., scanned images of original signatures), shall not be used in lieu of the engineer's actual signature on the original documents.]~~

(g) This section does not prevent the reproduction of ~~[final]~~ sealed and signed, original works for distribution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



22 TAC §137.33

The Texas Board of Professional Engineers (board) proposes an amendment §137.33, relating to Sealing Procedures. The proposed amendment includes a section regarding safeguarding electronic files. This proposed rule change will be in conjunction with amendments to §§131.81, 137.31, 137.35, 137.37, and 139.35, which are contemporaneously proposed elsewhere in this issue of the *Texas Register*. The proposed rule adds language to allow engineers to use an electronic seal and an electronic signature for sealing their work as the procedures are described in the Texas Engineering Practice Act. In addition, there was a change made as a result of legislative action that addresses sealing requirements for exempt industries (new subsection (m)) and a modification to the language which clarifies that an engineer must seal all pages of reports or plans issued by them (subsection (e)).

Wesley Smith, P.E., Engineering Specialist with the Texas Board of Professional Engineers has determined that, for the first five-year period the proposed amendment is in effect, there are no additional fiscal implications for the state or local government as a result of enforcing or administering the section as amended. The board staff has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule proposal. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Smith also has determined that, for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a more flexible use of electronic seals and signatures under the Texas Engineering Practice Act.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code, §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code, §1001.302, which outlines the minimum requirements for licensure; and §1001.303, which lists the requirements for an application for licensure.

No other statutes, articles, or codes are affected by the proposed amendment.

§137.33. *Sealing Procedures.*

(a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed or directly supervised by the professional engineer named and to delineate the scope of the engineer's work.

(b) License holders shall only seal work done by them, performed under their direct supervision as defined in §131.81 of this title, relating to Definitions, or shall be standards or general guideline specifications that they have reviewed and selected. Upon sealing, engineers take full professional responsibility for that work.

(c) When a license holder reviews and elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

- (1) individually sealed by the license holder; or
- (2) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing its use.

(d) License holders shall take reasonable steps to ensure the security of their physical or electronic ~~computer-generated~~ seals and electronic signatures [at all times]. For electronic seals and electronic signatures, the engineer must have reasonable security measures in place to protect these files. In the event of loss of a seal or electronic signature, the engineer will immediately give written notification of the facts concerning the loss to board.

(e) Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date by placing the following text or similar wording on the title sheet of bound engineering reports, specifications, details, calculations or estimates, and each sheet of plans or drawings regardless of size or binding, instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(f) License holders shall affix their ~~[an unobscured]~~ seal and original signature or electronic seal and signature with the date on ~~[or electronic signature as prescribed in §137.35 of this chapter to the originals of all documents containing]~~ the final version of their ~~[any]~~ engineering work before such work is released from their control. The signature and date shall not obscure the engineer's name or license number in the seal. Engineering work required to bear a seal and signature includes ~~[, including]~~ the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding. All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations). A seal may be added on such work if required or at the engineer's discretion. ~~[Electronic correspondence of this type shall be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations).]~~

(g) Work performed by more than one license holder shall be sealed in a manner such that all engineering can be clearly attributed to the responsible license holder or license holders. When sealing plans or documents on which two or more license holders have worked, the seal and signature of each license holder shall be placed on the plan or

document with a notation describing the work done under each license holder's responsible charge.

(h) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(i) A license holder, as a third party, may alter, complete, correct, revise, or add to the work of another license holder when engaged to do so by a client, provided:

(1) the client furnishes the documentation of such work submitted to the client by the first license holder;

(2) the first license holder is notified in writing by the second license holder of the engagement immediately upon acceptance of the engagement; and

(3) any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second license holder. The second license holder then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original license holder's design.

(j) A local authority may require an original seal and/or signature on reproduced documents.

(k) A plan, specification, plat, or report issued by a license holder for a project to be constructed or used in this state must include the license holder's seal placed on the document. A license holder is not required to use a seal if the project is to be constructed or used in another state or country.

(l) An engineer may securely transmit his or her final version of engineering work electronically provided that work bears the engineer's seal and uses one of the techniques described in §137.35(a) of this chapter (relating to Electronic Seals and Electronic Signatures) and must employ reasonable security measures to make the documents unalterable. Electronic correspondence of this type may be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms described in §137.1 of this chapter (relating to License Holder Designations).

(m) A license holder is not required to use a seal for a project for which the license holder is not required to hold a license under an exemption set forth under the Act, Texas Occupation Code §§ 1001.051 - 1001.066.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723

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22 TAC §137.35

The Texas Board of Professional Engineers (board) proposes an amendment to §137.35, relating to Electronic Seals and Sealing Specifications. The proposed amendment includes allowing the use of electronic files. This proposed rule change will be in conjunction with amendments to §§131.81, 137.31, 137.33, 137.37, and 139.35, contemporaneously proposed elsewhere in this issue of the *Texas Register*. The proposed rule adds language to allow engineers to use an electronic seal and an electronic signature for sealing their work as the procedures are described in the Texas Engineering Practice Act.

Wesley Smith, P.E., Engineering Specialist with the Texas Board of Professional Engineers has determined that, for the first five-year period the proposed amendment is in effect, there are no additional fiscal implications for the state or local government as a result of enforcing or administering the section as amended. The board staff has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule proposal. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Smith also has determined that, for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment is a more flexible use of electronic seals and signatures under the Texas Engineering Practice Act.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code, §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code, §1001.302, which outlines the minimum requirements for licensure; and §1001.303, which lists the requirements for an application for licensure.

No other statutes, articles, or codes are affected by the proposed amendment.

§137.35. Electronic Seals and Electronic Signatures [Sealing Requirements].

(a) Licensed professional engineers shall maintain the security of their electronic seals and electronic signatures. The following methods are allowed:

(1) Licensed professional engineers may electronically copy their original hard copy work that bears their seal, original signature, and date and transmit this work in a secure electronic format.

(2) An engineer may create an electronic seal and electronic signature for use in transmitting electronically formatted engineering work, regardless of whether the work was originally in hard copy or electronic format.

(b) As an alternative to electronic sealing and electronic signatures, engineers shall affix their original seals and signatures and date

to their engineering work as specified in §137.33(f) of this chapter (relating to Sealing Procedures).

[(a) Engineering work transmitted in an electronic format that contains a computer generated seal shall be accompanied by the following text or similar wording: "The seal appearing on this document was authorized by (Example: Leslie H. Doe, P.E. 0112) on (date)."- unless accompanied by an electronic signature as described in this section. A license holder may use a computer-generated representation of his or her seal on electronically conveyed work; however, the final hard copy documents of such engineering work must contain an original signature of the license holder(s) and date or the documents must be accompanied by an electronic signature as described in this section. A scanned image of an original signature shall not be used in lieu of an original signature or electronic signature.]

[(b) An electronic signature is a digital authentication process attached to or logically associated with an electronic document and shall carry the same weight, authority, and effects as an original signature. The electronic signature, which can be generated by using either public key infrastructure or signature dynamics technology, must be as follows:]

[(1) unique to the person using it.]

[(2) capable of verification.]

[(3) under the sole control of the person using it.]

[(4) linked to a document in such a manner that the electronic signature is invalidated if any data in the document are changed.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 26, 2007.

TRD-200705860

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 440-7723



22 TAC §137.37

The Texas Board of Professional Engineers (board) proposes an amendment to §137.37 relating to Sealing Misconduct. The proposed amendment includes a section regarding safeguarding electronic files. This proposed rule change will be in conjunction with amendments to §§131.81, 137.31, 137.33, 137.35, and 139.35, which are contemporaneously proposed elsewhere in this issue of the *Texas Register*. The proposed rule adds language to require safeguarding of engineers' electronic seal and electronic signature as they are used in the Texas Engineering Practice Act.

Wesley Smith, P.E., Engineering Specialist with the Texas Board of Professional Engineers, has determined that, for the first five-year period the proposed amendment is in effect, there are no additional fiscal implications for the state or local government as a result of enforcing or administering the section as amended. The board staff has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule proposal. There is no

adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Smith also has determined that, for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a requirement to safeguard electronic seals and signatures under the Texas Engineering Practice Act.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code, §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code, §1001.302, which outlines the minimum requirements for licensure; and §1001.303, which lists the requirements for an application for licensure.

No other statutes, articles or codes are affected by the proposed amendment.

§137.37. Sealing Misconduct.

A license holder is ~~shall be~~ guilty of misconduct and subject to disciplinary action if the license holder:

(1) knowingly signs or seals any engineering document or product if its use or implementation may endanger the health, safety, property or welfare of the public.

(2) signs or affixes a seal on any document or product when the license is inactive or has been revoked, suspended, or has expired.

(3) alters a sealed document without proper notification to the responsible license holder.

(4) allows others access to his or her electronic files containing his or her seal and/or electronic signature, unless access is explicitly authorized for particular engineering work.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 26, 2007.

TRD-200705861

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 440-7723



CHAPTER 139. ENFORCEMENT

SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers (board) proposes an amendment to §139.35(b), relating to Enforcement Proceedings, Sanctions, and Penalties. The proposed change is in the sanction table where a modification is made to "Improper use of seal" to include electronic signatures. The location of this rule is on page 62 of 67, 7 rows from the bottom of the table. This proposed rule change will be in conjunction with amendments to §§131.81, 137.31, 137.33, 137.35, and 137.37, which are contemporaneously proposed elsewhere in this issue of the *Texas Register*.

The proposed rule allows for enforcement action in conjunction with safeguarding the electronic seal and electronic signature in a similar fashion as safeguarding your physical seal. In addition, there is a typographical error under "Licensing" in the enforcement table. On page 62 of 67 in the third row down from the top of the table, is the location. For the violation-Fraud or deceit in obtaining a license, the (a) should be removed after §1001.452.

Wesley Smith, P.E., Engineering Specialist with the Texas Board of Engineers has determined that, for the first five-year period the proposed amendment is in effect, there are no additional fiscal implications for the state or local government as a result of enforcing or administering the section as amended. The board staff has determined that there is no additional cost to the agency or to licensees. There is no fiscal impact to individuals required to comply with the rule proposal. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Smith also has determined that, for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of the sealing and signing of documents under the Texas Engineering Practice Act.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code, §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code, §1001.302, which outlines the minimum requirements for licensure; and §1001.303, which lists the requirements for an application for licensure.

No other statutes, articles, or codes are affected by the proposed amendment.

§139.35. Sanctions and Penalties.

(a) (No change.)

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules:

Figure: 22 TAC §139.35(b)

(c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 26, 2007.

TRD-200705862

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 440-7723



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.51

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.51, concerning Preamble and General Principles.

The amendment to §501.51 will replace the phrase "of thought and action" in subsection (b) with the phrase "in fact and in appearance" and the rule identified in subsection (h) is corrected according to the rule number change from §501.52(9) to §501.52(8).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity and consistency regarding license holders' independence.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Com-

ments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.51. Preamble and General Principles.

(a) These rules of professional conduct were promulgated under the Public Accountancy Act, which directs the Texas State Board of Public Accountancy to promulgate rules of professional conduct "in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public."

(b) The services usually and customarily performed by those in the public, industry, or government practice of accountancy involve a high degree of skill, education, trust, and experience which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public's reliance, in turn, imposes obligations on persons utilizing professional designations, both to their clients and to the public in general. These obligations include maintaining independence in fact and in appearance [of thought and action], continuously improving professional skills, observing generally accepted accounting principles and generally accepted auditing standards, promoting sound and informative financial reporting, holding the affairs of clients in confidence, upholding the standards of the public accountancy profession, and maintaining high standards of personal and professional conduct in all matters.

(c) The board has an underlying duty to the public to insure that these obligations are met in order to achieve and maintain a vigorous profession capable of attracting the bright minds essential to serving adequately the public interest.

(d) These rules recognize the First Amendment rights of the general public as well as licensees and do not restrict the availability of accounting services. However, public accountancy, like other professional services, cannot be commercially exploited without the public being harmed. While information as to the availability of accounting services and qualifications of licensees is desirable, such information should not be transmitted to the public in a misleading fashion.

(e) The rules are intended to have application to all kinds of professional services performed in the practice of public accountancy, including services relating to:

- (1) accounting, auditing and other assurance services,
- (2) taxation,
- (3) financial advisory services,
- (4) litigation support,
- (5) internal auditing,
- (6) forensic accounting, and
- (7) management advice and consultation.

(f) Finally, these rules also recognize the duty of certified public accountants to refrain from committing acts discreditable to the profession. These acts, whether or not related to the accountant's practice, impact negatively upon the public's trust in the profession.

(g) In the interpretation and enforcement of these rules, the board may consider relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions and appropriate committees of professional organizations, but will not be bound thereby.

(h) Interpretive Comment: Outsourced internal audit services are considered engagements in the client practice of public accountancy as defined in §501.52(8) [(9)] of this title (relating to Definitions).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705724

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52, concerning Definitions.

The amendment to §501.52 will: replace the phrase "certificate or registration holder" with the word "person" in paragraph (2), add the word "Accounting" to paragraph (2), replace the phrase "American Institute of Certified Public Accountants" with "AICPA", add the acronym "PCAOB", add the phrase "or international" in paragraph (4)(A), replace the phrase "American Institute of Certified Public Accountants" with "AICPA," add the phrase "or international" in paragraph (4)(B), delete the definition for "Certificate or registration holder" formerly in paragraph (6), renumber the original paragraph (7) as paragraph (6), renumber the original paragraph (8) as paragraph (7); replace the word "person" with "party" in paragraph (7); add the phrase "or professional accounting work" to paragraph (7); renumber the original paragraph (9) as paragraph (8); replace the phrase "certificate or registration holder" with the word "person" in paragraph (8); delete the word "a" in paragraph (8); add the phrase "professional accounting services" to paragraph (8); delete the word "service" in paragraph (8); add the phrase "or professional

accounting work, and includes:" to paragraph (8); delete the phrase "service involving the use of accounting, attesting, or auditing skills." The phrase "service involving the use of accounting, attesting, or auditing skills" includes: (A) the issuance of reports on, or the preparation of, financial statements, including historical or prospective financial statements or any element thereof; (B) the furnishing of management or financial advisory or consulting services; (C) the preparation of tax returns or the furnishing of advice or consultation on tax matters;" in former paragraphs (8), (8)(A), (8)(B), and (8)(C); renumber subparagraph (D) to subparagraph (A) in new paragraph (8); renumber subparagraph (E) to subparagraph (B) in new paragraph (8); renumber the original paragraph (10) as paragraph (9); replace "person" with "party" in paragraph (9); renumber the original paragraph (11) as paragraph (10) and replace the phrase "certificate or registration holder's" with the word "person's" in paragraph (10); renumber the original paragraph (12) as paragraph (11) and add the phrase "or other comprehensive basis of accounting" in paragraph (11); renumber the original paragraph (13) as paragraph (12) and add the word "sole" and replace "or professional or other corporation or other business" with "corporation or other legally recognized business entity" in paragraph (12); renumber the original paragraph (14) as paragraph (13); replace the word "certificate" with "licensee" in paragraph (13); replace the word "certificate or registration holder" with "person" in paragraph (13); replace the word "certificate or registration holder" with "person" in paragraph (14); renumber the original paragraph (15) as paragraph (14); add a new definition of "Out-of-state practitioner and out of state firm," that "means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act" and insert that definition as the new paragraph (15); delete "or" and add "or "Compliance Assurance" in paragraph (16); replace "or professional or other corporation, or other business individual, partnership, corporation, registered limited liability partnership or limited liability company" with "sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity" and add the phrase "that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (22) of this section" to paragraph (17); replace "practicing" with "the client practice of" in paragraph (19); replace "person" for "firm or individual", replace "accounting" with "Accounting" and add "Professional Accounting Work in paragraph (20); add the word "Accounting" to paragraph (21); add "(s)" to the "statement" in paragraph (21)(A); delete the word "and" in paragraph (21)(C); add "(E) providing forensic accounting services; and" and "(F) providing internal auditing services" to paragraph (21); replace the following language "when used with reference to financial statements, either an engagement performed through the application of procedures under the Statement on Standards for Accounting and Review Services or any opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the

reliability of the financial statements to which reference is made. It also includes any form of language conventionally used with respect to a compilation or review of financial statements, and any other form of language that implies such special knowledge or competence" with the language "an opinion, report, or other document prepared in connection with an attest service that states or implies assurance as to the reliability of the financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or the language of the opinion, report, or other document itself" in the new paragraph (22).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clearer definitions that are consistent with changes in the Texas Public Accountancy Act as well as changes in other Board rules.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the

amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.52. Definitions.

The following words and terms, when used in title 22, part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code;

(2) "Advertisement" means a message which is transmitted to persons by, or at the direction of, a person ~~[certificate or registration holder]~~ and which has reference to the availability of the person ~~[certificate or registration holder]~~ to perform Professional Accounting Services;

(3) "Affiliated entity" means an entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries;

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the AICPA, PCAOB, [American Institute of Certified Public Accountants] or another national or international accountancy organization recognized by the board;

(B) a review, compilation or other engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the AICPA [American Institute of Certified Public Accountants] or another national or international accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the AICPA [American Institute of Certified Public Accountants] or another national or international accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA [American Institute of Certified Public Accountants] or another national or international accountancy organization recognized by the board;

(5) "Board" means the Texas State Board of Public Accountancy;

~~{(6) "Certificate or registration holder" the holders of all currently valid;}~~

~~{(A) certificates issued to individuals who have been awarded the designation certified public accountant by the board pur-~~

suant to the Act, or pursuant to corresponding provisions of a prior Act;]

~~[(B) registrations with the board under §901.355 of the Act; and]~~

~~[(C) firm licenses or registrations;]~~

(6) ~~[(7)]~~ "Charitable Organization" means an organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended;

(7) ~~[(8)]~~ "Client" means a party ~~[person]~~ who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service or professional accounting work;

(8) ~~[(9)]~~ "Client Practice of Public Accountancy" is the offer to perform or the performance by a person ~~[certificate or registration holder]~~ for a client or a potential client of professional accounting services or professional accounting work, and also includes [a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:]

~~[(A) the issuance of reports on, or the preparation of, financial statements, including historical or prospective financial statements or any element thereof;]~~

~~[(B) the furnishing of management or financial advisory or consulting services;]~~

~~[(C) the preparation of tax returns or the furnishing of advice or consultation on tax matters;]~~

(A) ~~[(D)]~~ the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and~~[/or]~~

(B) ~~[(E)]~~ the performance of litigation support services;

(9) ~~[(10)]~~ "Commission" means compensation for recommending or referring any product or service to be supplied by another party ~~[person]~~;

(10) ~~[(11)]~~ "Contingent fee" means a fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a person's ~~[certificate or registration holder's]~~ non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority;

(11) ~~[(12)]~~ "Financial Statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or other comprehensive basis of accounting. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements or Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition;

(12) ~~[(13)]~~ "Firm" means a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity ~~[or professional or other corporation, or other business]~~ engaged in the practice of public accountancy;

(13) ~~[(14)]~~ "Good standing" means compliance by a licensee ~~[certificate]~~ with the board's licensing rules, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the person ~~[certificate or registration holder]~~ must be in compliance with all the provisions of the board order to be considered in good standing;

(14) ~~[(15)]~~ "Licensee" means the holder of a license issued by the board to a person ~~[certificate or registration holder]~~ pursuant to the Act, or pursuant to provisions of a prior Act;

(15) "Out of state practitioner and out of state firm" means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act;

(16) "Peer review", ~~[or]~~ "Quality Review" or "Compliance Assurance" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm;

(17) "Person" means an individual, sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (22) of this section ~~[partnership, corporation, registered limited liability partnership, or limited liability company];~~

(18) "Principal office" means the location specified by the client as the address to which a service described in §517.1(a)(2) is directed and is synonymous with Home Office where it appears in the Act;

(19) "Practice unit" means an office of a firm required to be licensed with the board for the purpose of the client practice of ~~[practicing]~~ public accountancy;

(20) "Practice privilege" means the privilege for an out-of-state person ~~[Firm or individual]~~ to provide certain Professional Accounting Services or Professional Accounting Work in Texas to the extent permitted under Chapter 517 of the board rules;

(21) "Professional Accounting Services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

(A) issuing reports on financial statement(s) ~~[statement]~~;

(B) providing management or financial advisory or consulting services;

(C) preparing tax returns; ~~[and]~~

(D) providing advice in tax matters;

(E) providing forensic accounting services; and

(F) providing internal auditing services

(22) "Report" means an opinion, report, or other document, prepared in connection with an attest service that states or implies as-

surance as to the reliability of financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or the language of the opinion, report, or other document itself. [-, when used with reference to financial statements; either an engagement performed through the application of procedures under the Statement on Standards for Accounting and Review Services or any opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the reliability of the financial statements to which reference is made. It also includes any form of language conventionally used with respect to a compilation or review of financial statements; and any other form of language that implies such special knowledge or competence;]

(23) Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



SUBCHAPTER B. PROFESSIONAL STANDARDS

22 TAC §501.60

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.60, concerning Auditing Standards.

The amendment to §501.60 will replace the phrase "certificate or registration holder" with the word "person" and add the phrase "Public Company Accounting Oversight Board."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce auditing standards promulgated by the Public Company Accounting Oversight Board in addition to those promulgated by other standard setting institutions over any person who provides professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.60. Auditing Standards.

A person [~~certificate or registration holder~~] shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an auditor with respect to such financial statements, unless he has complied with applicable generally accepted auditing standards. Statements on auditing standards issued by the American Institute of Certified Public Accountants, auditing standards included in Standards for Audit of Government Organizations, Programs, Ac-

tivities and Functions issued by the United States General Accounting Office, Public Company Accounting Oversight Board, and in other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements must be justified.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §501.61

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.61, concerning Accounting Principles.

The amendment to §501.61 will replace the phrase "certificate or registration holder" with the phrase "person or person practicing under a practice privilege as provided for in §901.462 of the Act"; replace the phrase "In such a case, certificate or registration holder's" add the word "The" and add "(s)" to "statement".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce generally accepted accounting principles over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act, including those persons licensed in another state who perform that work in this state.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.61. *Accounting Principles.*

A person or person practicing under a practice privilege as provided for in §901.462 of the Act, ~~[certificate or registration holder]~~ shall not issue a report asserting that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the person or person practicing under a practice privilege as provided for in §901.462 of the Act ~~[certificate holder, or registration holder]~~ can demonstrate that by reason of unusual circumstances the financial statement(s) ~~[statements]~~ would otherwise have been misleading. ~~The [In such a case, the certificate or registration holder's]~~ report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the generally accepted accounting principles would result in a misleading statement. For purposes of this section, generally accepted accounting principles are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §501.62

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.62, concerning Other Professional Standards.

The amendment to §501.62 will replace the phrase "certificate or registration holder" with the word "person"; and replace the phrase "generally recognized" with "national or international" in paragraph (5).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce professional standards over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.62. Other Professional Standards.

A person [~~certificate or registration holder~~] in the performance of consulting services, accounting and review services, any other attest service, or tax services shall conform to the professional standards applicable to such services. For purposes of this section, such professional standards are considered to be interpreted by:

(1) Statements on Standards on Consulting Services (SSCS) issued by the American Institute of Certified Public Accountants;

(2) Statements on Standards for Accounting and Review Services (SSARS) issued by the American Institute of Certified Public Accountants;

(3) Statements on Standards for Attestation Engagements (SSAE) issued by the American Institute of Certified Public Accountants;

(4) Statements on Standards for Tax Services issued by the American Institute of Certified Public Accountants; or

(5) similar pronouncements by other entities having similar national or international [~~generally recognized~~] authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.70

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.70, concerning Independence.

The amendment to §501.70 will: replace the phrase "certificate or registration holder" with the word "person"; add the word "accounting"; add "or professional accounting work," add ", the PCAOB" and add "national or international".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce independence standards, including those promulgated by the Public Company Accounting Oversight Board, over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.70. Independence.

A person ~~[certificate or registration holder]~~ in the performance of professional accounting services or professional accounting work, including those who are not members of the AICPA, shall conform in fact and in appearance to the independence standards established by the AICPA and the board, and, where applicable, the U.S. Securities and Exchange Commission, the General Accounting Office, the PCAOB and other national or international regulatory or professional standard setting bodies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §501.71

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.71, concerning Receipt of Commissions and Other Compensation.

The amendment to §501.71 will: replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (b), and (c); replace the phrase "licensee or the licensee's firm" with the phrase "person" in subsection (a); adds the phrase "pays or agrees to pay" in subsection (c); deletes the phrase "to another person" from subsection (c); deletes the phrase "to such other persons" from subsection (c); deletes the phrase "the other person is" from subsection (c)(1) and (c)(2); replaces the phrase "to persons formerly engaged in the practice of public accountancy" in subsection (e); and deletes subsection (f).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding the receipt of commissions and other compensation over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is

believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.71. Receipt of Commissions and Other Compensation.

(a) A person ~~[certificate or registration holder]~~ shall not for a commission recommend or refer to a client any product or service or refer any product or service to be supplied to a client, or receive a commission, when the person ~~[licensee or the licensee's firm]~~ also performs services for that client requiring independence under §501.70 of this chapter (relating to Independence).

(b) This prohibition applies during the period in which the person ~~[certificate or registration holder]~~ is engaged to perform any of the services requiring independence and during the period covered by any of the historical financial statements involved in such services requiring independence.

(c) A person ~~[certificate or registration holder]~~ who receives or agrees to receive, ~~pays or agrees to pay~~, other compensation with respect to services or products recommended, referred, or sold by him ~~[to another person]~~ shall, no later than the making of such recommendation, referral, or sale, make the following disclosures in writing ~~[to such other persons]~~:

(1) if ~~[the other person is]~~ a client, the nature, source, and amount of all such other compensation; or

(2) if ~~[the other person is]~~ not a client, the nature and source of any such other compensation.

(d) The disclosure shall be made regardless of the amount of other compensation involved.

(e) This section does not apply to payments received from the sale of all, or a material part, of an accounting practice, or to retirement payments ~~[to persons formerly engaged in the practice of public accountancy]~~.

~~[(f) Interpretive Comment: Reference should be made to §501.73(d) of this title (relating to Integrity and Objectivity) for issues relating to the payment of fees by a certificate or registration holder to any person to obtain clients for the certificate or registration holder.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §501.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.72, concerning Contingency Fees.

The amendment to §501.72 will: replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (b), (c), and (d); add the word "accounting" to subsection (a); add the phrase "or professional accounting work" to subsection (a); add the phrase "professional accounting" to subsection (a); add the phrase "or professional accounting work" to subsection (a); replace the phrase "licensee or the licensee's firm" with the word "person" in subsection (b); delete subsection (e); and renumber subsection (f) as subsection (e).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding contingency fees over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the

statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.72. Contingency Fees.

(a) A person [~~certificate or registration holder~~] shall not perform for a contingent fee any professional accounting services or professional accounting work for, or receive such a fee from, a client for whom the person [~~certificate or registration holder~~] performs professional accounting services or professional accounting work requiring independence under §501.70 of this chapter (relating to Independence).

(b) A person [~~certificate or registration holder~~] shall not prepare an original or amended federal, state, local or other jurisdiction tax return for a contingent fee for any client during the period in which the person [~~licensee or the licensee's firm~~] is engaged to perform any of the services referenced by subsection (a) of this section and the period covered by any historical or prospective financial statements involved in any of the referenced services. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority.

(c) A person [~~certificate or registration holder~~] shall not perform an engagement as a testifying accounting expert for a contingent fee. A testifying accounting expert is one that at any time during the proceeding becomes subject to disclosure and discovery under the procedural rules of the forum where the matter for which his services were engaged is pending.

(d) The prohibitions outlined in subsections (a) and (b) of this section apply during any period in which the person [~~certificate or registration holder~~] is engaged to perform any of the services referenced by subsections (a) and (b) of this section, and the period covered by any historical or prospective financial statements involved in any of the referenced services.

[(e) A certificate or registration holder shall otherwise comply with the provisions of §501.70 of this chapter (relating to Independence).]

(e) [(f)] Interpretive Comment: A consulting accounting expert may become a testifying accounting expert when the client for whom he is working makes his work available to a testifying expert. A consulting accounting expert who is working on a contingent fee basis should work closely with his client to ensure that he does not inadvertently become a testifying expert through the actions of his client. An accounting expert may not accept a contingent fee for part of an engagement and a set fee for part of the same engagement. A consulting accounting expert who becomes a testifying expert may not accept a contingent fee for the part of his work done as a consultant, but must be compensated on a set fee basis for all of the work performed on the same engagement. A consulting accounting expert who enters into a contingent fee engagement should reach an agreement, preferably in

writing, with the client as to how he will be compensated should he become a testifying expert prior to beginning the engagement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

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22 TAC §501.73

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.73, concerning Integrity and Objectivity.

The amendment to §501.73 will: replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (b), and (d); add the word "accounting" in subsections (a) and (b); add the phrase "or professional accounting work" in subsections (a), (b) and (d); replace the phrase "as there is reasonable support for the position" with the phrase "as any tax position taken complies with standards set forth in Circular 230 issued by the Internal Revenue Service and AICPA Statements on Standards for Tax Services."; delete subsection (d); renumber subsection (e) as subsection (d); and renumber subsection (f) as subsection (e).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding integrity and objectivity over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.73. *Integrity and Objectivity.*

(a) A person [~~certificate or registration holder~~] in the performance of professional accounting services or professional accounting work shall maintain integrity and objectivity, shall be free of conflicts of interest and shall not knowingly misrepresent facts nor subordinate his or her judgment to others. In tax practice, however, a person [~~certificate or registration holder~~] may resolve doubt in favor of his client as long as any tax position taken complies with applicable standards such as those set forth in Circular 230 issued by the Internal Revenue Service and AICPA Statements on Standards for Tax Services [as there is reasonable support for the position].

(b) A conflict of interest may occur if a person [~~certificate or registration holder~~] performs a professional accounting service or professional accounting work for a client or employer and the person [~~certificate or registration holder~~] has a relationship with another person, entity, product, or service that could, in the person's [~~certificate or registration holder's~~] professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the person's [~~certificate or registration holder's~~] objectivity. If the person [~~certificate or registration holder~~] believes that the professional accounting service or professional accounting work can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties, then this rule shall not operate to prohibit the performance of the professional accounting service or professional accounting work because of a conflict of interest.

(c) (No change.)

~~[(d) A certificate or registration holder shall not pay a commission to a third party to obtain a client unless, prior to being engaged by such client, the certificate or registration holder discloses to the client in writing the fact and the fixed or variable amount of such commission. This section does not apply to payments made to a certificate or registration holder for the purchase of all, or a material part, of an accounting practice, or to retirement payments to persons formerly engaged in the practice of public accountancy.]~~

~~(d) [(e)] A person~~ [~~certificate or registration holder~~] shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs independence or objectivity in rendering professional accounting services or professional accounting work, or which is conducted so as to augment or benefit the accounting practice unless these rules are observed in the conduct thereof.

(e) [(f)] Interpretive Comment: Reference should be made to §501.62(4) and (5) of this title (relating to Other Professional Standards) where applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705822

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §501.74

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.74, concerning Competence.

The amendment to §501.74 will: replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (a)(1), (a)(2), (b), (c) and (d); add the word "accounting" in subsection (a); add the phrase "or professional accounting work" in subsection (a); add the word "accounting" to subsection (a)(1); add the phrase "or professional accounting work" to subsection (a)(1); delete the sentence "The certificate or registration holder may have the knowledge required to complete the professional services with competence prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services." in subsection (a)(2); replace the phrase "through these means" with the phrase "to perform professional accounting services or professional accounting work" in subsection (a)(2); add the phrase "accounting or professional accounting work" to subsection (a)(2); replace the words "sufficient data" with the phrase "and maintain appropriate documentation" in subsection (d); add subsection (e) "Interpretive comment: The person may have the knowledge required to complete the professional services with competence prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding competence over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act, as well as greater clarity regarding cases where such a person is not competent to perform professional accounting services.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.74. *Competence.*

(a) A person [~~certificate or registration holder~~] shall not undertake any engagement for the performance of professional accounting services or professional accounting work which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with §501.60 of this title (relating to Auditing Standards), §501.61 of this title (relating to Accounting Principles), and §501.62 of this title (relating to Other Professional Standards).

(1) Competence to perform professional accounting services or professional accounting work involves both the technical qualifications of the person [~~certificate or registration holder~~] and the person's [~~certificate or registration holder's~~] staff and the ability to supervise and evaluate the quality of the work being performed.

(2) [~~The certificate or registration holder may have the knowledge required to complete the professional services with competence prior to performance. In some cases, however, additional~~

~~research or consultation with others may be necessary during the performance of the professional services.~~] If a person [~~certificate or registration holder~~] is unable to gain sufficient competence to perform professional accounting services or professional accounting work [through these means], the person [~~certificate or registration holder~~] shall suggest to the client the engagement of someone competent to perform the needed professional accounting or professional accounting work service, either independently or as an associate.

(b) A person [~~certificate or registration holder~~] shall exercise due professional care in the performance of professional services.

(c) A person [~~certificate or registration holder~~] shall adequately plan and supervise the performance of professional services.

(d) A person [~~certificate or registration holder~~] shall obtain and maintain appropriate documentation [~~sufficient data~~] to afford a reasonable basis for conclusions and recommendations in relation to any professional services performed.

(e) Interpretive comment: The person may have the knowledge required to complete the professional services with competence prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §501.75

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.75, concerning Confidential Client Communications.

The amendment to §501.75 will replace the phrase "certificate or registration holder" with the word "person" and add the word "accounting" and the phrase "or professional accounting work".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding confidential client com-

munications over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.75. Confidential Client Communications.

Except by permission of the client or the authorized representatives of the client, a person [certificate or registration holder] or any partner, officer, shareholder, or employee of a person [certificate or registration holder] shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person [certificate or registration holder]. Such information shall be deemed confidential. However, nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures pursuant to a subpoena or other compulsory process, in investigations or proceedings under the Act, in ethical investigations conducted by private professional organizations, or in the course of peer reviews.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §501.76

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.76, concerning Records and Work Papers.

The amendment to §501.76 will replace the phrase "certificate or registration holder" with the word "person" in subsections (a), (a)(2), (a)(3), (b), (c), (c)(1), (c)(2), (c)(3), (f) and (g); replace the word "whether" with the word "either" in subsection (a); delete the phrase "the form of" from subsection (a); replace the phrase "computer readable format" with the phrase "other useable form" in subsection (a); delete the phrase "for personnel time and photocopying" from subsection (a); replace the word "working" with the word "work" in subsections (a)(3), replace the phrase "certificate or registration holder's" with "person's" in subsections (a)(3) and (c)(2); replace the word "working" with the word work in subsections (a)(3), (c), (c)(1), (c)(2), (c)(3), (d), (e), and (f); replace the word "papers" with the word "documents" in subsection (c)(1) and (f); replace the word "documents" for the words "worksheets" in subsections (e)(1), (e)(2) and (e)(4) and "papers" in subsection (f).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding records and work papers over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel

(Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.76. Records and Work Papers.

(a) Upon request, regardless of the status of the client or former client's account, a person [certificate or registration holder] shall provide to the client or former client any accounting or other records, either [whether] in [the form of] hard copy or other useable form [computer readable format], belonging to, or obtained from or on behalf of, the client that the person [certificate or registration holder] removed from the client's premises or received on behalf of the client. A person [The certificate or registration holder] may make and retain copies of such records when they form the basis of work done by him. For a reasonable charge [for personnel time and photocopying], a person [certificate or registration holder] shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

(1) a copy of the client's tax return;

(2) a copy of any report or other document previously issued by the person [certificate or registration holder] to or for such client provided that furnishing such reports to or for a client or former client would not cause the person [certificate or registration holder] to be in violation of the portions of [Section] §501.60 of this title (relating to Auditing Standards) concerning subsequent events;

(3) a copy of the person's work [certificate or registration holder's working] papers, to the extent that such work [working] papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

(b) A person [certificate or registration holder], when performing an engagement that is terminated prior to the completion of the engagement, is required to return or furnish the originals of only those records originally obtained by the person [certificate or registration holder] from the client.

(c) Work [working] papers developed by a person [certificate or registration holder] during the course of a professional engagement as a basis for, and in support of, an accounting, audit, consulting, tax, or other professional report prepared by the person [certificate or registration holder] for a client, shall be and remain the property of the person [certificate or registration holder] who developed the work [working] papers.

(1) Work [working] papers, whether in the form of hard copy or computer readable format, are those documents [papers] developed by the person [certificate or registration holder] incident to the performance of his engagement which do not result in changes to the client's records or are in part of the records ordinarily maintained by the client.

(2) Analyses of inventory or other accounts as part of the person's [certificate or registration holder's] selective audit procedures, even when prepared by client personnel at the request of the person [certificate or registration holder], are the person's work [certificate or registration holder's working] papers.

(3) If the analyses described in paragraph (2) of this subsection result in changes to the client's records, the person [certificate or registration holder] is required to furnish the details from his work [working] papers in support of the journal entries recording such changes unless the journal entries themselves contain all necessary details.

(d) Work [Working] papers include, but are not limited to:

(1) - (7) (No change.)

(e) Work [Working] papers which constitute client records include, but are not limited to:

(1) documents [worksheets] in lieu of books of original entry such as listings and distributions of cash receipts or cash disbursements;

(2) documents [worksheets] in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar depreciation records;

(3) all adjusting and closing journal entries and supporting details when the supporting details are not fully set forth in the explanation of the journal entry; and

(4) consolidating or combining journal entries and documents [worksheets] and supporting detail in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(f) Documentation or work documents [working papers] required by professional standards for attest services shall be maintained in paper or electronic format by a person [certificate or registration holder] for a period of not less than five years from the date of any report issued in connection with the attest service, unless otherwise required by another regulatory body. Failure to maintain such documentation or work [working] papers constitutes a violation of this section and may be deemed an admission that they do not comply with professional standards.

(g) Interpretive Comment: It is recommended that a person [certificate or registration holder] obtain a receipt or other written documentation of the delivery of records to a client.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §501.77

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.77, concerning Acting through Others.

The amendment to §501.77 will replace the phrase "certificate or registration holder" with the word "person" in subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding acting through others over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.77. Acting through Others.

(a) A person ~~[certificate or registration holder]~~ shall not permit others including non-CPA owners and employees, to carry out on his behalf, either with or without compensation, acts, which, if carried out by the person ~~[certificate or registration holder]~~, would place him in violation of these rules of professional conduct.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §501.78

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.78, concerning Withdrawal or Resignation.

The amendment to §501.78 will replace the phrase "certificate or registration holder" with the word "person" in subsection (a), (b) and (c); add the phrase "to provide public accounting services and public accounting work" to subsection (a); replace "501.90(17)" with "501.90(16)".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding withdrawal or resignation over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.78. Withdrawal or Resignation.

(a) If a person ~~[certificate or registration holder]~~ cannot complete an engagement to provide public accounting services and public accounting work or employment assignment in a manner that complies with the requirements of this chapter, the person ~~[certificate or registration holder]~~ shall withdraw from the engagement or resign from the employment assignment.

(b) If a person ~~[certificate or registration holder]~~ withdraws from an engagement or resigns from an employment assignment pursuant to this section, the person ~~[certificate or registration holder]~~ shall inform the client or employer of the withdrawal or resignation.

(c) Interpretive Comment: Any withdrawal or resignation shall preferably be in writing. A person ~~[certificate or registration holder]~~ shall comply with the requirements of §501.75 of this title (relating to Confidential Client Communications) and §501.90(16)(17) of this title (relating to Discreditable Acts) regarding confidential information of clients and employers during and after a withdrawal or resignation executed pursuant to this section. For purposes of this section, an engagement commences once an engagement letter is signed by the client, time is charged to the engagement, or compensation is received by a person ~~[certificate or registration holder]~~ in connection with an engagement or employment assignment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.80

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.80, concerning Practice of Public Accountancy.

The amendment to §501.80 will replace the phrase "certificate or registration holder" with the word "person"; replace the phrase "issued by the board" with the phrase "or qualifies under a practice privilege" in subsection (a); add the phrase "or qualifies under a practice privilege" in subsection (a); renumber "(9)" to "(8)" in subsection (c) and renumber "(19)" to "(21)" in subsection (c).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding the practice of public accountancy over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is

believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.80. Practice of Public Accountancy.

(a) A person [certificate or registration holder] may not engage in the practice of public accountancy unless he holds a valid license or qualifies under a practice privilege [issued by the board]. A person [certificate or registration holder] may not use the title or designation "certified public accountant", the abbreviation "CPA", or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant unless he holds a valid license issued by the board or qualifies under a practice privilege. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued.

(b) Any licensee of this board in good standing as a certified public accountant or public accountant may use such designation whether or not the licensee is in the client, industry, or government practice of public accountancy. However, a licensee who is not in the client practice of public accountancy may not in any manner, through use of the CPA designation or otherwise, claim or imply independence from his employer or that the licensee is in the client practice of public accountancy.

(c) Interpretive Comment: This section incorporates the definitions of the practice of public accountancy and professional services and accounting work found in §501.52(8)(9) and §501.52(21)(49) of this title (relating to Definitions) as well as §901.003 of the Act (relating to Practice of Public Accountancy).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705721

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §501.81

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.81, concerning Firm License Requirements.

The amendment to §501.81 will remove the phrase "including a sole proprietorship" in subsection (a); add the phrase "or offer to provide" in subsection (a); add the phrase "issued by the board or qualifies under a practice privilege" to subsection (a); replace subsection "(b)" with the following subsection "(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state."; delete subsections (b)(1) and (b)(2); add subsection (c) that reads "(c) A firm is required to hold a license issued by the board and an individual must practice through a firm that holds such a license, if for a client that has its principal office in this state, the individual performs: (1) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards; (2) an examination of prospective financial information that is to be performed in accordance with the Statement on Standards of Attestation Engagements; or (3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor."; renumber former subsection "(c)" to subsection "(d)"; renumber former subsection "(d)" to subsection "(e)"; replace the phrase "certificate or registration holder" with the word "person" in the new subsection (e); replace the letter "(c)" with "(d)", add a new subsection (e)(3) that reads "(3) pursuant to a practice privilege."; renumber former subsection (e) to subsection (f); replace the word "individual's" with "person's" in new subsection (f); delete the word "third" in subsection (f); replace "certificate holder" with "person" in subsection (f); replace the phrase "unregistered entity" with the phrase "an unlicensed firm" in subsection (f); renumber subsection (f) to subsection (g); replace the phrase "certificate or registration holder" with the word "person" in subsection (g); add the number "5" in new subsection (g), replace the number "(9)" with number "(8)" in subsection (g); replace the number "(19)" with the number "(21)" in subsection (g) and replace the letter "(c)" with the letter "(d)" in subsection (g).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a firm license requirement rule that is consistent with changes in the Texas Public Accountancy Act concerning out of state certified public accountants who practice in this state as well as allows the Board to enforce its rule regarding firm license requirements over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.81. Firm License Requirements.

(a) A Firm, ~~[including a sole proprietorship,]~~ may not provide or offer to provide attest services or use the title "CPA," "CPAs," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm license issued by the board or qualifies under a practice privilege.

(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state.

(c) A firm is required to hold a license issued by the board and an individual must practice through a firm that holds such a license, if for a client that has its principal office in this state, the individual performs:

(1) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;

(2) an examination of prospective financial information that is to be performed in accordance with the Statement on Standards of Attestation Engagements; or

(3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor.

~~[(b) An individual may not provide attest services unless:]~~

~~[(1) the individual has a license or registration issued under the Act; and]~~

~~[(2) the individual offers the attest services through an entity holding a firm license.]~~

(d) ~~[(e)]~~Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an un-

licensed entity in the client practice of public accountancy must include the disclaimer: "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.

(e) ~~[(d)]~~ The requirements of subsection (d) ~~[(e)]~~ of this section do not apply with regard to a person ~~[certificate or registration holder]~~ performing services:

(1) as a licensed attorney at law of this state while in the practice of law or as an employee of a licensed attorney when acting within the scope of the attorney's practice of law; ~~or~~

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the legally permitted activities of the institution's trust department; or ~~[-]~~

(3) pursuant to a practice privilege.

(f) ~~[(e)]~~On the ~~[third]~~ determination by the board that a person ~~[certificate holder]~~ has practiced without a license or through an unlicensed firm ~~[unregistered entity]~~ in violation of subsection (d) ~~[(e)]~~ of this section, the person's ~~[individual's]~~ certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

(g) ~~[(f)]~~Interpretive Comment: A person ~~[certificate or registration holder]~~ who is employed by an unlicensed firm that offers services that fall within the definitions of the client practice of public accountancy as defined in §501.52(8) ~~[(501.2(9))]~~ and §501.52(21) ~~[(501.2(19))]~~ of this title (relating to Definitions) and §901.003 of the Act (relating to Practice of Public Accountancy) must comply with the disclaimer requirement found in subsection (d) ~~[(e)]~~ of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 26, 2007.

TRD-200705863

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §501.82

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.82, concerning Advertising.

The amendment to §501.82 will replace the phrase "certificate or registration holder" with the word "person" in the subsections (a), (a)(1), (a)(2), (c), (d), (e)(1), and (f); add the word "cellular" and the phrase "or any other electronic means" in subsection (b)(2); delete the word "or" from subsection (b)(2); delete the word "annoy" and delete the ", " after "alarm" in subsection (b)(7); replace the phrase "a person" with "anyone" in subsections (b)(9), (e)(1), (e)(2), and (e)(3); replace the word "the person" with the word "anyone" in subsection (b)(10); replace the word "persons" with

the word "parties" in subsections (d); replace the word "a person" with the word "anyone" in subsection (e); delete the phrase ", which are currently not being provided by another certificate or registration holder" in subsection (e)(3); and delete the phrase "radio and television" in subsection (f).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that takes into account changes in technology as well as allows the Board to enforce its rule regarding advertising over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.82. Advertising.

(a) A person [~~certificate or registration holder~~] shall not use or participate in the use of:

(1) any written, oral, or electronic communication having reference to the person's [~~certificate or registration holder's~~] professional services that contains a false, fraudulent, misleading or deceptive statement or claim; nor

(2) any written, oral or electronic communication that refers to the person's [~~certificate or registration holder's~~] professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

(b) Definitions:

(1) A "false, fraudulent, misleading, or deceptive statement or claim" includes, but is not limited to, a statement or claim which:

(A) - (J) (No change.)

(2) Broadcast--Any transmission over the airwaves or over a cable, wireline, Internet, cellular, [~~or~~] e-mail system or any other electronic means.

(3) - (6) (No change.)

(7) Harassing--Any word, gesture, or action which tends to [~~annoy,~~] alarm[~~;~~] and verbally abuse another person.

(8) Intimidation--Willfully to take, or attempt to take, by putting in fear of bodily harm.

(9) Overreaching--Tricking, outwitting, or cheating anyone [~~a person~~] into doing an act which he would not otherwise do.

(10) Threats--Any menace of such a nature and extent as to unsettle the mind of anyone [~~the person~~] on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.

(11) Vexatious--Irritating or annoying.

(c) It is a violation of these rules for a person [~~certificate or registration holder~~] to persist in contacting a prospective client when the prospective client has made known to the person [~~certificate or registration holder~~], or the person [~~certificate or registration holder~~] should have known the prospective client's desire not to be contacted by the person [~~certificate or registration holder~~].

(d) In the case of direct mail communication, the person [~~certificate or registration holder~~] shall retain a copy of the actual mailing along with a list or other description of parties [~~person~~] to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the person [~~certificate or registration holder~~] for a period of at least 36 months from the date of the last transmission or use.

(e) Subsection (d) of this section does not apply to anyone [~~persons~~] when:

(1) the communication is made to anyone [~~a person~~] who is at that time a client of the person [~~certificate or registration holder~~];

(2) the communication is invited by anyone [~~the person~~] to whom it was made; or

(3) the communication is made to anyone [~~a person~~] seeking to secure the performance of professional services[~~, which are currently not being provided by another certificate or registration holder~~].

(f) In the case of [~~radio and television~~] broadcasting, the broadcast shall be recorded and the person [~~certificate or registration~~

holder] shall retain a recording of the actual transmission for at least 36 months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705774

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §501.84

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.84, concerning Form of Practice.

The amendment to §501.84 will replace the phrase "certificate or registration holder" with the word "person", replace the phrase "a proprietorship, a partnership, a limited liability company, a registered limited liability partnership, a professional public accounting corporation, or business corporation" with the phrase "a sole proprietorship, partnership, limited liability partnership, liability company, corporation or other legally recognized business entity that provides professional accounting services or professional accounting work"; and replace the phrase "state, territory, or foreign country" with the word "jurisdiction".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer rule that allows the Board to enforce its rule regarding advertising over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.84. Form of Practice.

A person [~~certificate or registration holder~~] may practice public accountancy only in a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity that provides professional accounting services or professional accounting work, [~~a proprietorship, a partnership, a limited liability company, a registered limited liability partnership, a professional public accounting corporation, or business corporation~~] organized under the laws of the State of Texas or an equivalent law of another jurisdiction [~~state, territory, or foreign country~~], or as an employee of one of these entities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705816

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §501.85

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.85, concerning Complaint Notice.

The amendment to §501.85 will replace the phrase "certificate or registration holder" with the word "person".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding complaint notices over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.85. Complaint Notice.

When a firm receives a complaint that an alleged violation of the Act or Rules of Professional Conduct has occurred, a person [~~certificate or registration holder~~] shall provide to the complainant a statement that: Complaints concerning Certified Public Accountants may be addressed in writing to the Texas State Board of Public Accountancy at 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701-3900, telephone (512) 305-7800, e-mail to enforcement@tsbpa.state.tx.us, or fax (512) 305-7854.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705815

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90, concerning Discreditable Acts.

The amendment to §501.90 will: replace the phrase "certificate or registration holder" with the word "person" in the first sentence and in paragraph (18); delete the phrase "to a person" at the end of paragraph (5); replace the phrase "a voluntary" with the word "any" in paragraph (7); replace the word "agency" with the phrase "regulatory or licensing body" in paragraph (7); replace the word "authority" with the word "body" in paragraph (13); delete paragraph (16); renumber paragraph (17) as paragraph (16); replace the phrase "certificate holder" with "person" in paragraph (16); renumber paragraph (18) as paragraph (17); renumber paragraph (19) as paragraph (18), and replace the word "Individuals" with the word "Persons".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding discreditable acts over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act. In addition, the rule makes clear that any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action is a discreditable act. Finally, the rule removes the discreditable act of causing a breach in the security of the CPA exam so that issue can be addressed in the rules regarding the CPA exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.90. Discreditable Acts.

A person ~~[certificate or registration holder]~~ shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) - (4) (No change.)

(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm ~~[to a person];~~

(6) (No change.)

(7) suspension or revocation of or any ~~[a voluntary]~~ consent decree concerning the right to practice before any state or federal regulatory or licensing body ~~[agency]~~ for a cause which in the opinion of the board warrants its action;

(8) - (12) (No change.)

(13) false swearing or perjury in any communication to the board or any other federal or state regulatory or licensing body; ~~[authority];~~

(14) - (15) (No change.)

~~[(16) causing a breach in the security of the CPA examination;]~~

~~(16) [(17)]~~ voluntarily disclosing information communicated to the person ~~[certificate holder]~~ by an employer, past or present, or through the person's ~~[certificate holder's]~~ employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to a subpoena or other compulsory process;

(D) in an investigation or proceeding by the board under the Public Accountancy Act; or

(E) in an ethical investigation conducted by a professional organization of certified public accountants; and

~~(17) [(18)]~~ breaching the terms of an agreed consent order entered by the Board or violating any Board Order.

~~(18) [(19)]~~ Interpretive Comment: The board has found in §519.7 of this title (relating to Misdemeanors that Subject a Person ~~[Certificate or Registration Holder]~~ to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, a License, or Renewal of a License for Persons ~~[Individuals]~~ with Criminal Backgrounds) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705720

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §501.91

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.91, concerning Reportable Events.

The amendment to §501.91 will add subsections (a)(4) and (a)(5) to read "(4) an unappealable adverse finding by any state or federal court or an agreed settlement in a civil action against a licensee concerning professional accounting services or professional accounting work." and "(5) the loss of a professional license from another state or federal regulatory agency such as an insurance license or a securities license, resulting from an unappealable adverse finding." and add the phrase "and further defined in §501.90(18) and §519.7 of this title" in subsection (e).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that makes it easier for the Board to become aware of any legal action that results in an adverse finding against a license holder, thereby facilitating investigations into possible violations of the Board's rules and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.91. Reportable Events.

(a) A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee has knowledge of these events:

(1) (No change.)

(2) the cancellation, revocation, or suspension of a certificate, other authority to practice or refusal to renew a certificate or other authority to practice as a certified public accountant or a public accountant, by any state, foreign country or other jurisdiction; [ø]

(3) the cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency or other licensing agency; [-]

(4) an unappealable adverse finding in any state or federal court or an agreed settlement in a civil action against the licensee concerning professional accounting services or professional accounting work; or

(5) the loss of a professional license from another state or federal regulatory agency such as an insurance license or a securities license, resulting from an unappealable adverse finding.

(b) - (d) (No change.)

(e) Interpretive Comment: A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community and further defined in §501.90(18) and §519.7 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705775

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §501.92

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.92, concerning Frivolous Complaints.

The amendment to §501.92 will replace the phrase "certificate or registration holder" with the word "person"; replace the phrase "certificate holder" with the word "person" and add a new, final sentence that reads: "A person who makes a complaint against another person that is groundless and brought in bad faith, for the purpose of harassment, or for any other improper purpose shall be in violation of this rule."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding frivolous complaints over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act. In addition, the rule makes clear

that the Board considers complaints made in bad faith to be violations of the rules of professional conduct and sanctionable.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.92. *Frivolous Complaints.*

A person ~~[certificate or registration holder]~~ who, in writing to the board, accuses another person ~~[certificate holder]~~ of violating the rules of the board shall assist the board in any investigation and/or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, is a violation of this rule. A person who makes a complaint against another person that is groundless and brought in bad faith, for the purpose of harassment, or for any other improper purpose shall be in violation of this rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705814

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848

22 TAC §501.93

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.93, concerning Responses.

The amendment to §501.93 will: replace the phrase "An applicant, certificate or registration holder" with the phrase "A person" in subsection (a) and (b); replace the phrase "An applicant, certificate or registration holder" with the phrase "a person" in subsection (b); replace the word "working" with the word "work" in subsections (b) and (c); delete the word "board" in subsection (c); delete the phrase ", certificate holder" from subsection (d); adds a new subsection (f): "(f) Interpretive Comment. In this section, the term board includes board staff."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that allows the Board to enforce its rule regarding responses over persons who provide professional accounting services or professional accounting work as defined by Board rule and the Texas Public Accountancy Act. In addition, the rule makes clear that Board staff represents the Board for purposes of making requests for substantive responses to Board inquiries.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment un-

der any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.93. Responses.

(a) ~~A person [An applicant, certificate or registration holder]~~ shall substantively respond in writing to any communication from the board requesting a response, within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the communication was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number, or e-mail address furnished to the board by the applicant ~~or person~~; ~~certificate or registration holder~~].

(b) ~~A person [An applicant, certificate or registration holder]~~ shall provide copies of documentation and/or ~~work [working]~~ papers in response to the board's request at no expense to the board within 30 days. The board may specify a shorter time for response in the communication when circumstances so require. The time to respond shall commence on the date the request was mailed, delivered to a courier or delivery service, faxed or e-mailed to the last address, facsimile number or e-mail address furnished to the board by ~~a person [the applicant, certificate or registration holder]~~. ~~A person [An applicant, certificate or registration holder]~~ may comply with this subsection by providing the board with original records for the board to duplicate. In such a circumstance, upon request the board will provide an affidavit from the custodian of records documenting custody and control of the records.

(c) Failure to timely respond substantively to written ~~[board]~~ communications, or failure to furnish requested documentation and/or ~~work [working]~~ papers, constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(d) Each applicant~~;~~ ~~certificate holder~~ and each person required to be registered with the board under the Act shall notify the board, in writing, of any and all changes in either such person's mailing address or telephone number and the effective date thereof within 30 days before or after such effective date.

(e) Interpretive Comment. This section should be read in conjunction with §519.6 of this title (relating to Subpoenas).

(f) Interpretive Comment. In this section, the term board includes board staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER B. CERTIFICATION BY EXAMINATION

22 TAC §511.21

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.21, concerning Examination Application.

The proposed amendment to §511.21 will: replace the word "subject" with the word "section" in subsection (d); replace the phrase "reexamination applicant" with the word "application" in subsection (e); and replace the word "continue" with the phrase "be verified" in subsection (e).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be none.

Mr. Treacy has determined that for the first five-year period the proposed amendment is in effect the public benefits expected as a result of adoption of the amendment will be a rule regarding the application for the CPA exam that is consistent with the requirements of the computer based exam.

The probable economic cost to persons required to comply with the proposed amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§511.21. Examination Application.

(a) - (c) (No change.)

(d) Each applicant for the Uniform CPA Examination must pay an eligibility fee to the board for each section ~~[subject]~~ for which the applicant requests to take. The actual fee set by the board is identified in §521.14 of this title (relating to Eligibility Fees). Application forms not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

(e) Each application ~~[reexamination applicant]~~ must be verified ~~[continue]~~ to show that the applicant remains qualified in all respects to take the examination.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §511.22

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.22, concerning Initial Filing of the Application of Intent.

The proposed amendment to §511.22 will add the phrase "at least one section of" in subsection (a)(1) and replace the phrase "Section 521.11" with the phrase "Rule 521.12" in subsection (c).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the proposed amendment is in effect the public benefits expected as a result of adoption of the amendment will be a rule regarding the procedure for filing the application of intent to take the CPA

exam that is consistent with the requirements of the computer based exam.

The probable economic cost to persons required to comply with the proposed amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§511.22. Initial Filing of the Application of Intent.

(a) The initial filing of the application of intent shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws. The application of intent may be submitted at any time and will be used to determine compliance and eligibility for the applicant to take the Uniform CPA Examination. The application of intent will remain active until:

(1) the applicant takes at least one section of the Uniform CPA Examination within two years from the date of submission of the application; or

(2) (No change.)

(b) (No change.)

(c) Each applicant who submits an application of intent to determine eligibility for the Uniform CPA Examination must pay a nonrefundable filing fee set by the board in Section 521.12 ~~[Section 521.11]~~ of this title (relating to Filing Fees). Applications of intent not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

(d) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705770

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.52, concerning Recognized Colleges and Universities.

The amendment to §511.52 will replace the phrase "passing upon" with the phrase "considering"; add the phrase "--Higher Learning Commission" to paragraph (2); add the phrase "--Commission on Institutions of Higher Education" to paragraph (3); replace the phrase "Association of Schools and Colleges" with the phrase "Commission on Colleges and Universities" in paragraph (4); add the phrase "--Commission on Colleges" to paragraph (5); add the phrase "--Commission for Senior Colleges" at the end of paragraph (6); and add a new paragraph (8) that states "The board recognizes and accepts only community colleges that offer an accounting program reviewed and accepted by the board. (See §511.57(a)(2) and §511.58(a) of this chapter for degree and course requirements.)"

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies which colleges and community college programs are recognized by the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses be-

cause the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.52. *Recognized Colleges and Universities.*

In considering [~~passing upon~~] the qualifications of an applicant, the board shall generally accept colleges or universities which offer a baccalaureate or higher degree, and which are recognized by one of the following accrediting associations:

(1) (No change.)

(2) North Central Association of Colleges and Schools--Higher Learning Commission;

(3) New England Association of Schools and Colleges--Commission on Institutions of Higher Education;

(4) Northwest Commission on Colleges and Universities [~~Association of Schools and Colleges~~];

(5) Southern Association of Colleges and Schools--Commission on Colleges; or

(6) Western Association of Schools and Colleges--Commission for Senior Colleges.

(7) (No change.)

(8) The board recognizes and accepts only community colleges that offer an accounting program reviewed and accepted by the board. (See §511.57(a)(2) and §511.58(a) of this chapter for degree and course requirements.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: January 6, 2008
For further information, please call: (512) 305-7848



22 TAC §511.56

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.56, concerning Educational Qualifications under the Act.

The amendment to §511.56 will replace the word "and" with the words "consisting of" in subsection (b)(2); renumber subsection (b)(3) to subsection (b)(2)(A) and subsection (b)(4) to subsection (b)(2)(B); delete the word "complete" at the start of proposed subsection (b)(2)(A) and (B); add the following text "upper level" after the word "of" in proposed subsection (b)(2)(A) and (B); in proposed subsection (b)(2)(A) delete the word "and"; in proposed subsection (b)(2)(B) replace "20" with "24"; add the following "; and" at the end of proposed subsection (b)(2)(B); and new subsection (b)(2)(C) is created with the text "a 3 semester hour board approved ethics course as defined by board rule, §511.58 of this chapter".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule clarifying the education requirements for candidates for a license issued by the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is

believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.56. *Educational Qualifications under the Act.*

(a) (No change.)

(b) An applicant for the Uniform CPA Examination under the current Act shall meet the following educational requirements at the time of filing the initial application to take the examination and in order to qualify to write the examination:

(1) (No change.)

(2) complete not fewer than 150 semester hours or quarter-hour equivalents of courses, as defined by board rule consisting of; and]

(A) [(3)] [complete] not fewer than 30 semester hours or quarter-hour equivalents of upper level accounting courses; and]

(B) [(4)] [complete] not fewer than 24 [20] semester hours or quarter-hour equivalents of upper level related business courses, as defined by board rule; and

(C) a 3 semester hour board approved ethics course as defined by board rule, §511.58 of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705776

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58, concerning Definitions of Related Business Subjects.

The amendment to §511.58 will replace the word "division" with the word "level" in subsection (a); in subsection (b) replace the text "Effective July 1, 2005, the" with the word "The", replace "21" with "24", and replace the word "division" with the word "level"; and in subsection (c) replace "21" with "24" and delete the text "effective July 1, 2005".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that reflects the increased number of passing semester hours of upper division courses required by the Board as part of the education requirement for candidates of licenses issued by the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.58. Definitions of Related Business Subjects.

(a) An individual who holds a baccalaureate degree from a recognized educational institution may take related business courses offered at an accredited community college, provided they are recognized as upper level ~~[division]~~ courses for a 4-year BBA degree from an institution recognized by the board.

(b) ~~The [Effective July 1, 2005, the]~~ board will accept not fewer than ~~24~~ ~~[24]~~ passing semester hours of upper level ~~[division]~~ courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. Not more than 6 semester hours taken in any subject area may be used to meet the minimum hour requirement.

(1) - (10) (No change.)

(c) In addition to the ~~24~~ ~~[24]~~ hours required in subsection (b) of this section, ~~[effective July 1, 2005,]~~ the board requires that 3 passing semester hours be earned as a result of taking a course in ethics. The course must be taken at a recognized educational institution and should include core values such as ethical reasoning, integrity, objectivity and independence.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.70

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.70, concerning Grounds for Disciplinary Action of Candidates.

The amendment to §511.70 will replace the word "applicant" with "candidate" in subsection (d); in subsection (e)(1), (2), and (4) replace the word "examinee" with "candidate", in subsection (e)(3) delete the word "examination" before the word "candidate", and in subsection (e)(5) replace the word "examinees" with "candidates".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of

adoption of the proposed amendment will be a rule that reflects a change in terminology from "examinee" with "candidate."

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.70. Grounds for Disciplinary Action of Candidates.

(a) - (c) (No change.)

(d) The board may discipline any candidate for cheating, subverting, attempting to subvert, aiding, abetting or conspiring to cheat on the CPA Examination at any location within the state where the examination is given, or where a Texas candidate is taking the CPA Examination at a location outside of the state. The voluntary departure or expulsion from an examination shall not deprive the board of its authority to take action against the candidate [applicant].

(e) Cheating, subverting, attempting to subvert, aiding, abetting or conspiring to cheat on the CPA Examination includes, but is not limited to, engaging in, solicitation, or procuring any of the following:

(1) any communication between the candidate [examinee] and anyone [any person], other than a proctor or exam administrator while the examination is in progress;

(2) any communication between the candidate [examinee] and anyone [any person] at any time concerning the content of the examination including, but not limited to, any exam question or answer, unless the examination has been publicly released by the preparer of the examination;

(3) taking by another of all or any part of the examination for the examination [candidate];

(4) possession or use at any time during the examination or while the candidate [examinee] is in the examination testing center of any device, material, or document that is not expressly authorized for use by examinees during the examination including but not limited to, notes, crib sheets, books, and electronic devices; or

(5) using or referring at any time after the commencement of the examination and prior to the conclusion of the examination, to include all breaks during the examination, to any device, material, or document that is not expressly authorized for use by candidates [examinees].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705717

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §511.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.72, Uniform Examination.

The amendment to §511.72 will replace both "National Association of State Boards of Accountancy" with "NASBA" and "American Institute of Certified Public Accountants" with "AICPA" twice in subsection (a); in subsection (b) replace the word "subjects" with "sections"; in subsection (c) replace the text "board authorization form and one other" with "Notice to Schedule form provided by NASBA" and add the following text ", and a second form of identification such as a board issued form" after the word "candidate".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule regarding the uniform examination that reflects changes in requirements as well as changes imposed by the computer based exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.72. Uniform Examination.

(a) The board shall contract with the NASBA [National Association of State Boards of Accountancy] for the administration of the examination, in conjunction with the AICPA [American Institute of Certified Public Accountants] and a test vendor, for a certificate as a certified public accountant within the board's jurisdiction. The examination may be offered at the board's office and at testing facilities within the state that are approved and monitored by the board or its designee. The examination shall be offered during scheduled months as determined by the AICPA [American Institute of Certified Public Accountants], the NASBA [National Association of State Boards of Accountancy], and the testing vendor.

(b) The board shall utilize the uniform CPA examination available from the American Institute of Certified Public Accountants covering the following sections [subjects]:

(1) - (4) (No change.)

(c) All candidates taking the examination are required to have in their possession the Notice to Schedule form provided by NASBA, a [board authorization form and one other] government issued form of identification containing a photograph of the candidate, and a second form of identification such as a board issued form.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §511.73

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.73, concerning Notice to Candidate to Schedule Taking a CPA Exam Subject.

The amendment to §511.73 will replace the word "Subject" with "Section" in the rule's title; in subsection (a) following the word "examination" add the following text "within the next ninety days from the approval of the eligibility application"; in subsection (b) replace the word "applicant" with "candidate", replace the text "National Association of State Boards of Accountancy" with "NASBA", replace the word "subject" with "section", after the word "applicant" add the text "has applied", and delete the text "is eligible. The actual fee set by the board is identified in 521.2 of this title (relating to Examination Fees)"; in subsection (c) after the word "schedule" add the text "with the vendor" and replace the word "subject" with "section"; and in subsection (d) replace the word "subject" with "section" and replace the last use of the word "section" with "rule".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that reflects changes to the schedule for payment as well as the notice provided by the Board to exam candidates imposed by the computer based exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.73. Notice to Candidate to Schedule Taking a CPA Exam Section [Subject].

(a) The board shall inform examination applicants of their eligibility to take the CPA examination within the next ninety days from the approval of the eligibility application.

(b) The candidate [applicant] is required to pay an examination fee to the NASBA [National Association of State Boards of Accountancy] for the examination section [subject] for which the applicant has applied [is eligible. The actual fee set by the board is identified in 521.2 of this title (relating to Examination Fees)].

(c) After payment of the examination fee, the applicant is required to schedule with the vendor to take the section [subject] at a board approved location.

(d) The payment of the required examination fee and taking of the CPA examination section [subject] must be completed within the time of eligibility as determined by the board. Applicants not in compliance with this rule [section] must reapply to the board for the establishment of a new eligibility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705811

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §511.77

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.77, concerning Grading.

The amendment to §511.77 will replace the word "Grading" with "Scoring" in the rule's title; replace the word "grade" with "score", replace the word "grades" with "score", replace the text "the grading authority" with "NASBA", and delete the "%".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule reflecting the changes made to grading the exam imposed by the computer based exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.77. Scoring [Grading].

Scoring [Grading] of the examination shall be performed [accomplished] by the AICPA [American Institute of Certified Public Accountants], subject to the approval by the board. The candidate must attain the uniform passing score [grade] established through a psychometrically acceptable standard-setting procedure approved by the board. The current minimum passing score [grade] is 75[%]. The board shall establish a method for the accurate tracking and recording

of a candidate's score [~~grade~~]. Not later than the 30th day after the day on which the board receives a candidate's score [~~grades~~] from NASBA [~~the grading authority~~], the candidate will be notified of the score [~~grades~~] unless board action is pending and the individual is precluded from receiving the examination results until the board action is resolved. In no event will any information concerning a candidate's performance on the examination be given to anyone other than the candidate unless the board has written authorization to do so.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §511.79

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.79, concerning Request for Review and Appeal.

The amendment to §511.79 will delete the text "and Appeal" from the rule's title; delete text ": (1)"; replace the word "paper" with "result"; replace the text "American Institute of Certified Public Accountants" with "AICPA"; replace the text "graded the paper; or" with "scored the uniform examination."; and delete paragraph (2).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule regarding test score review that reflects changes imposed by the computer based exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.79. Request for Review [and Appeal].

Within 90 days following the release of the Uniform CPA Examination results, an unsuccessful candidate[;]

[~~(1)~~] may upon written request and payment of the requisite fee have the examination result [~~paper~~] reviewed by the AICPA [~~American Institute of Certified Public Accountants~~] which originally scored the uniform examination. [~~graded the paper; or~~]

[~~(2)~~] may upon written requests and payment of the requisite fee, inspect a copy of the questions and answers at the board office during regular office hours, and submit a written statement which may be an appeal to the American Institute of Certified Public Accountants which originally graded the paper. Copies of the examination questions or answers may not be made.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705809

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §511.80

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.80, concerning Granting of Credit.

The amendment to §511.80 will in subsection (a) replace the word "grade" with "score", replace the word "subject" with "section", and replace the text "the candidate took the subject" with

"of notification of passing score results"; in subsection (b) replace all of the word "subjects" with "sections"; delete subsection (c); reletter subsection (d) as subsection (c); in new subsection (c) replace the first word "subject" with "section"; reletter subsection (e) as subsection (d); and replace the word "subjects" with "sections" in the new subsection (d).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule reflecting changes made to granting credit for the CPA exam imposed by the computer based exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.80. *Granting of Credit.*

(a) The board shall grant credit to a candidate for the satisfactory completion of the Uniform Certified Public Accountant Examination (UCPAE) provided the candidate earns a passing score [grade] as determined by board rule on the section [subject]. The credit shall be valid for eighteen months from the actual date of notification of passing score results [the candidate took the subject].

(b) A candidate who [earned credit(s) after implementation of the computer-based examination] must pass the remaining sections [subjects] within the next eighteen months. Should a candidate's exam credit be invalidated due to the expiration of eighteen months without earning credit on the remaining sections [subjects], the candidate remains qualified to take the examination.

~~(c)~~ A candidate who earned conditional credit(s) on the UCPAE prior to the implementation of the computer-based examination must pass the remaining subjects within the next six consecutive examinations or eighteen months, whichever is less, from the actual date the candidate earned conditional credit(s). Credit(s) earned for each subject(s) offered on the written UCPAE will transition to the computer-based examination as follows:}

{(1) credit earned for Auditing will equate to credit for Auditing and Attestation;}

{(2) credit earned for Financial Accounting and Reporting will equate to credit for Financial Accounting and Reporting;}

{(3) credit earned for Accounting and Reporting will equate to credit for Regulation; and}

{(4) credit earned for Business Law and Professional Responsibilities will equate to credit for Business Environment and Concepts.}

(c) ~~{(d)}~~ A candidate receiving and retaining credit for every section [subject] on the UCPAE, within an eighteen month period, subject to the limitations imposed by the Act, shall be considered by the board to have completed the examination and may make application for certification as a certified public accountant.

(d) ~~{(e)}~~ A candidate who has received and retained credit for any or all sections [subjects] on the UCPAE may transfer such credits to another licensing jurisdiction if the candidate pays in advance a transfer fee set by board rule as identified in §521.7 of this title (relating to Fee for Transfer of Credits).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705808

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848

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22 TAC §511.82

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.82, concerning Application for Transfer of Credits.

The amendment to §511.82 will in subsection (a)(1) replace the word "graded" with "scored"; in subsection (b) replace the text ". It shall be submitted to the executive director, and shall" with the word "to"; and replace the last use of the word "grades" with "scores".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that reflects changes in the procedure for the transfer of credits imposed by the computer based exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.82. Application for Transfer of Credits.

(a) A candidate who has satisfactorily completed all or part of the Uniform Certified Public Accountant examination given by the

licensing authority of another jurisdiction may make application to the board for the transfer of the credits provided:

(1) the examination was prepared and scored [graded] by the American Institute of Certified Public Accountants; and

(2) - (3) (No change.)

(b) Applications shall be made on a form prescribed by the board, accompanied by the requisite fee as set by the board and identified in §521.7 of this title (relating to Fees), and additional documents requested ~~to~~. It shall be submitted to the executive director, and shall include written authorization from the candidate for the board to solicit and receive information relating to the candidate and the scores [grades] made and credits earned by the candidate on all examinations taken under the jurisdiction of another state.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705807

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §511.83

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.83, concerning Granting of Credit by Transfer of Credit.

The amendment to §511.83 will delete subsection (a); reletter subsection (b) as subsection (a); delete the text "taken after January 1, 2004," in new subsection (a)(1); replace the word "grade" with "score" in new subsection (a)(1); replace the word "subject" with "section" in new subsection (a)(1) and (2); reletter subsection (c) as subsection (b) and replace the word "subjects" with "sections" in the new subsection (b); reletter subsection (d) as subsection (c); replace the word "subjects" with "sections" in the new subsection (c); replace the text "American Institute of Certified Public Accountants" with "AICPA" and replace the text "National Association of State Boards of Accountancy" with "NASBA"; and add new subsections (d) and (e).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result

of adoption of the proposed amendment will be an update of the rule regarding the transfer of credit for partial completion of the CPA exam to reflect changes imposed by the computer based exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.83. Granting of Credit by Transfer of Credit.

{(a) In order for the board to grant credit to a candidate for partial completion of the Uniform CPA Examination given by the licensing authority of another jurisdiction taken after September 1, 1991 and prior to January 1, 2004, the candidate must have met the following requirements:}

{(1) the candidate sat for all subjects for which the candidate was eligible;}

{(2) the candidate earned a grade of 75 or higher on any two subjects of the examination;}

{(3) the candidate scored a minimum grade of 50 on each subject not passed;}

{(4) the candidate was awarded credit by the licensing authority of another jurisdiction for the subject(s) taken while a candidate of that board; and}

{(5) the credit awarded by the licensing authority of another jurisdiction has not expired.}

(a) [(b)] In order for the board to grant credit to a candidate for partial completion of the Uniform CPA Examination given by the

licensing authority of another jurisdiction [~~taken after January 1, 2004,~~] the candidate must have met the following requirements:

(1) the candidate earned a score [~~grade~~] of 75 or higher on any section [~~subject~~] of the examination;

(2) the candidate was awarded credit by the licensing authority of another jurisdiction for the section(s) [~~subject(s)~~] taken while a candidate of that board; and

(3) the credit awarded by the licensing authority of another jurisdiction has not expired.

(b) [(e)] If the board accepts transfers of credit, it will also accept transfers of credit for sections [~~subjects~~] passed at subsequent examinations.

(c) [(d)] The grades made by the candidate on sections [~~subjects~~] under consideration must be the ones reported to the licensing authority of another jurisdiction by the AICPA [~~American Institute of Certified Public Accountants~~] through the NASBA [~~National Association of State Boards of Accountancy~~].

(d) Any candidate allowed conditional credit for section(s) passed, must pass the remaining section(s) within the next eighteen (18) months from the date conditional credit was awarded or forfeit credit received for the section.

(e) Any candidate who has earned the right to partial reexamination and who fails to pass the remaining section(s) of the examination within the applicable time limits shall lose the right to partial reexamination and must take the entire examination upon later application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §511.84

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Public Accountancy (Board) proposes the repeal of §511.84, concerning Partial Examination after Transfer of Credit.

The proposed repeal of §511.84 will remove a rule that is no longer relevant.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero because the repeal does not require the state to do anything.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a rule that is no longer relevant.

The probable economic cost to persons required to comply with the repeal will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§511.84. Partial Examination after Transfer of Credit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705734

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848

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22 TAC §511.87

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.87, concerning Loss of Credit.

The amendment to §511.87 will replace the word "examinations" with the text "testing windows" in subsection (a) and add the text "(See §511.102 of this chapter for the definition of testing window.)" at the end of subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule regarding loss of credit that reflects changes imposed by the computer-based exam.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.87. Loss of Credit.

(a) Any candidate having earned credit under this Act or a prior Act and who has two testing windows [examinations] remaining before the expiration of credits earned shall be notified prior to each examination of these facts. (See §511.102 of this chapter for the definition of testing window.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705805

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



SUBCHAPTER E. VENDOR REQUIREMENTS

22 TAC §511.102

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.102, concerning CPA Examination Availability.

The amendment to §511.102 will delete subsection (a); delete the following text from subsection (b): "(b) Beginning in 2005, the"; add the word "The" to the beginning of former subsection (b); replace the word "months" with the text "testing windows" in former subsection (b); replace "," with "/" between January and February, April and May, July and August, and October and November in the former subsection (b); delete "and" between October and November and replace the " " between August and October with an "and" in the former subsection (b).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that reflects changes in examination schedules.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.102. CPA Examination Availability.

[(a) The examination will be available at test centers on designated days and at designated times during the months of April, May, July, August, October and November during 2004.]

[(b)] The [Beginning in 2005, the] examination will be available at test centers on designated days and at designated times during the testing windows [months] of January/[] February, April/[] May, July/[] August and[] October/[and] November.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §511.103

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.103, concerning Examination Scheduling.

The amendment to §511.103 will add the text "by the vendor" after the word "maintained" in subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies who maintains call centers.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.103. Examination Scheduling.

(a) Candidates shall schedule the CPA Examination through a call center maintained by the vendor for that purpose, through the internet at a website maintained for that purpose or at a designated test center. Contact information for the call centers, websites and test centers is available at the board's office and through its website.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705778

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §511.104

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.104, concerning Test Center Locations.

The amendment to §511.104 will add a new subsection (b); reletter subsection (b) as subsection (c); in new subsection (c) add the text "All test center locations will conform to the standards established by the Americans with Disabilities Act of 1990."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that explicitly states the reasons why a test center may be closed as well as a statement that testing centers will conform to the standards established by the Americans with Disabilities Act of 1990.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is

believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.104. Test Center Locations.

(a) (No change.)

(b) The board may require that the CPA exam be discontinued at a test center due to:

(1) inadequate staffing;

(2) breach in security; or

(3) other conditions that are not in compliance with requirements set out by the Board, AICPA or NASBA.

(c) ~~[(b)]~~ All test center locations will conform to the standards established by the Americans with Disabilities Act of 1990.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §511.105

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.105, concerning Test Center Check-In.

The amendment to §511.105 will insert the following text "such as a valid driver license or unexpired passport," in subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that provides examples of what kinds of government issued documents are acceptable at test center check-in.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.105. Test Center Check-In.

(a) A candidate for the CPA examination must present two forms of identification to the test center administrator at the time of check-in to take a section of the exam. One form of identification must be a government issued document, such as a valid driver license or unexpired passport, and contain the photograph and signature of the candidate. The candidate's name on the form of identification must match the record in the vendor's database of the candidate scheduled to take the exam.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848



22 TAC §511.107

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.107, concerning No-Show, Late Arrival and Late Cancellation.

The amendment to §511.107 will insert the following text "set by the test vendor" and delete the text "of \$35.00" in subsection (b)(2).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that establishes who will set the additional fee when a candidate requests a schedule change or a cancellation.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.107. *No-Show, Late Arrival and Late Cancellation.*

(a) (No change.)

(b) The candidate may be charged a reasonable fee for a rescheduled exam or cancellation.

(1) (No change.)

(2) A candidate that requests a change in scheduling or cancellation 29 to 5 days prior to the original day of testing will be charged an additional fee set by the test vendor. [~~of \$35.00.~~] The candidate must make direct contact by noon of the fifth business day before the day of the exam with personnel at the call center or at a local testing center. Leaving a message on a recorder or a voice mail is not sufficient to confirm a change or cancellation.

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848



SUBCHAPTER F. EXPERIENCE REQUIREMENTS

22 TAC §511.121

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.121, concerning Application for Approval of Experience.

The amendment to §511.121 will replace the previous language in subsection (b)(1) including "and/or compilation, services" with "services as defined in §501.52(2) of this title,"; replace subsection (b)(2) text with the following text, "Professional accounting services or professional accounting work as defined in §501.52(21) of this title."; delete subsection (b)(3) - (5); and in subsection (d) delete the following text, "to the executive director".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies what constitutes acceptable work experience.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.121. Application for Approval of Experience.

(a) (No change.)

(b) Acceptable work experience shall be gained in at least one of the following areas:

(1) attest services as defined in §501.52(4) of this title,
[and/or compilation services;]

(2) professional accounting services or professional accounting work as defined in §501.52(21) of this title.

{(2) preparation of financial statements and reports;}

{(3) preparation of tax returns and/or consultation on tax matters;}

{(4) consultation, design, and/or implementation of computer software when the consultation, design, and/or implementation

imply the possession of accounting or auditing skills or expert knowledge in accounting or auditing; or}

{(5) supervision of activities described in paragraphs (2) and (3) of this subsection.}

(c) (No change.)

(d) A candidate for certification as a certified public accountant shall submit [to the executive director] an application for approval of work experience. The application shall be made on a form prescribed by the board and submitted after completion of the examination requirement.

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §511.122

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.122, concerning Acceptable Work Experience.

The amendment to §511.122 will insert the following text "or higher" after text "level" and insert text "add skills" after the text "knowledge" in subsection (b); in subsection (c)(1) insert text "Acceptable work experience includes:"; add subsection (c)(1)(A) with the following text "attest services as defined in §501.52(4) of this title;" add subsection (c)(1)(B) with the following text "professional accounting or professional accounting work as defined in §501.52(21) of this title;" in subsection (c)(5) replace the following text "as approved by the board will" with the following text "on a full time basis may"; and add subsection (c)(8) with the following text "Self employment may not be used to satisfy the work experience requirement."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies what constitutes acceptable work experience.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.122. Acceptable Work Experience.

(a) (No change.)

(b) Non-routine accounting involves the use of independent judgment, applying entry level or higher professional accounting knowledge and skills to select, correct, organize, interpret, and present real-world data as accounting entries, reports, statements, and analyses extending over a diverse range of tax, accounting, assurance, and control situations.

(c) All work experience, to be acceptable, shall be gained in the following categories or in any combination of these.

(1) Client practice of public accountancy. All work experience gained in a firm in the client practice of public accountancy must be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters. If such firm is a CPA firm it shall be in good standing with the board, or, if the experience is gained in another state or territory, the firm shall be in good standing and in compliance with all laws applicable to CPA firms of that state or territory. Acceptable work experience includes:

(A) attest services as defined in §501.52(4) of this title;

(B) professional accounting services or professional accounting work as defined in §501.52(21) of this title;

(2) - (4) (No change.)

(5) Education. Work experience gained as an instructor at a college or university will qualify if evidence is presented showing independent thought and judgment was used on non-routine accounting matters. Only the teaching of upper division courses on a full time basis may [as approved by the board will] be considered. All experience shall be supervised by the department chair or faculty member who is a CPA.

(6) - (7) (No change.)

(8) Self employment may not be used to satisfy the work experience requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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22 TAC §511.123

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.123, concerning Reporting Work Experience.

The proposed amendment to §511.123 will add a new subsection (a) that states "One year of experience shall consist of full or part-time employment that extends over a period of not less than one year and not more than three years and includes not fewer than 2000 hours of performance of services described in Section 511.122."; renumber the original subsection (a) as subsection (b); delete the former subsection (b) which read "The board requires full time work experience of 40 hours per week, but may consider work experience earned on a part time basis, provided at least 20 hours per week are worked."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be none.

Mr. Treacy has determined that for the first five-year period the proposed amendment is in effect the public benefits expected as a result of adoption of the amendment will be a rule that states how many hours of work experience is necessary for candidates seeking a license issued by the Board.

The probable economic cost to persons required to comply with the proposed amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§511.123. Reporting Work Experience.

(a) One year of experience shall consist of full or part-time employment that extends over a period of not less than one year and not more than three years and includes not fewer than 2000 hours of performance of services described in Section 511.122.

(b) [(a)] Work experience must be reported in years and months.

[(b) The board requires full time work experience of 40 hours per week, but may consider work experience earned on a part time basis; provided at least 20 hours per week are worked.]

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



SUBCHAPTER H. CERTIFICATION

22 TAC §511.161

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.161, concerning Qualifications for Issuance of a Certificate.

The proposed amendment to §511.161 will delete the text "(1) successfully completed the Uniform CPA Examination;" that follows the first sentence of the section.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be none.

Mr. Treacy has determined that for the first five-year period the proposed amendment is in effect the public benefits expected as a result of adoption of the amendment will be a rule without duplicative provisions.

The probable economic cost to persons required to comply with the proposed amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§511.161. Qualifications for Issuance of a Certificate.

The certificate of a certified public accountant shall be granted by the board to any individual who qualifies under the current Act and has met the following qualifications: [~~(1) successfully completed the Uniform CPA Examination;~~]

(1) - (10) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §511.163

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.163, concerning Examination on the Rules of Professional Conduct.

The amendment to §511.163 will delete the original subsection (a); add new subsection (a) the new text will be "Candidates applying for the issuance of the CPA certificate who have not completed a board-approved ethics course within the past two years to meet the education requirements to take the CPA Examination, must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board (chapter 501) offered through a board-approved and registered provider of continuing professional education."; add new subsection (b) with the new text "Candidates applying for the issuance of the CPA certificate who completed a board-approved ethics course to meet the education requirements to take the CPA Examination more than two years prior to the date of submitting the application for issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, (chapter 501) offered through a board-approved and registered provider of continuing professional education.; renumber the original subsection (b) with subsection (c); renumber the original subsection (c) with paragraph (1) and add the text "on the Rules of Professional Conduct"; renumber subsection (d) with paragraph (2); renumber subsection (d)(1) with subparagraph (A); renumber subsection (d)(2) with subparagraph (B).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies where a test candidate can find the rules that form the basis of the test on the rules of professional conduct.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.163. Board Approved Ethics Requirement and Examination on the Rules of Professional Conduct.

(a) Candidates applying for the issuance of the CPA certificate who have not completed a board-approved ethics course within the past two years to meet the education requirements to take the CPA Examination, must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board (chapter 501) offered through a board-approved and registered provider of continuing professional education.

{(a) Candidates applying for the issuance of the CPA certificate must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, offered through a board-approved and registered provider of continuing professional education.}

(b) Candidates applying for the issuance of the CPA certificate who completed a board-approved ethics course to meet the education requirements to take the CPA Examination more than two years prior to the date of submitting the application for issuance of the CPA certificate

must successfully complete a board-approved four-hour ethics course of comprehensive study on the Rules of Professional Conduct of the board, (chapter 501) offered through a board-approved and registered provider of continuing professional education.

(c) [(b)] Candidates applying for the issuance of the CPA certificate must also pass an examination on the rules of professional conduct promulgated by the board.

(1) [(e)] The examination on the Rules of Professional Conduct must be completed not more than six months prior to the issuance of the CPA certificate.

(2) [(d)] A grade of 85% must be scored on the exam in order to be considered passing.

(A) [(4)] If a grade of 85% is not scored on the exam, the candidate will be sent another exam.

(B) [(2)] Failure to score at least 85% on the re-exam test would prevent the candidate from taking the exam for six months. Failure to again score less than 85% would continue the cycle.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER A. CONTINUING PROFESSIONAL EDUCATION PURPOSE AND DEFINITIONS

22 TAC §523.101

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Public Accountancy (Board) proposes the repeal of §523.101, concerning Savings Provisions and Dispositions Table.

The proposed repeal of §523.101 will remove a rule that is no longer relevant.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero because the repeal does not require the state to do anything.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a rule that is no longer relevant.

The probable economic cost to persons required to comply with the repeal will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§523.101. Savings Provisions and Dispositions Table.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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22 TAC §523.102

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.102, concerning Purpose and Definitions.

The amendment to §523.102 will replace the original subsection (c) with a new subsection (c) that states: "(c) CPAs may participate in a variety of sponsored learning activities, such as "live classroom programs" or "self-study programs". (1) "Live programs" are those educational processes that are designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the internet which includes the following: (A) Workshops, seminars, and conferences with substantial interaction by a qualified instructor/facilitator. A sponsor will issue certificates of completion at the end of the class for participants who attended the entire program. (B) "Blended programs or interactive computer programs" include: (i) "Group self-study" programs that are based on self-study materials presented in a group format with substantial interaction from a qualified instructor who is responsible for answering participant's questions or who leads the discussion of individual topics presented in the materials. (ii) "Webinar" is a program that is a web cast and the participants are led by a discussion leader/facilitator that interacts with the web cast instructors. Sponsors will issue certificates of completion at the end of the class. (2) "Self-study programs" provide ongoing feedback for the participant regarding the learning process without substantial interaction of an instructor/facilitator. (A) This type of program clearly defines learning objectives and manages the participant through the learning process by: (i) requiring frequent response to questions that test for understanding of the material presented: providing evaluative feedback to incorrectly answered questions; and (ii) providing evaluative feedback to correctly answered questions. (B) Sponsor will provide a certificate of completion upon successfully passing the final exam. (C) Self-study programs include the following: (i) programs that are taken on the internet individually and involve the participant answering questions that test for understanding the course and passing a final exam to earn credit for the course. A certificate of completion is immediately received once the participant successfully passes the final exam. (ii) courses in which course materials are sent to a participant and after completing the course and the final exam, the participant sends the final exam to the sponsor either electronically or by mail for grading. The sponsor may send the grade either electronically or by mail to the participant." Subsection (d)(1) - (3) is proposed for deletion.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies

what the board means when it refers to a variety of sponsored learning activities.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.102. Purpose and Definitions.

(a) - (b) (No change.)

(c) licensees may participate in a variety of sponsored learning activities, such as "live classroom programs" or "self-study programs".

(1) "Live programs" are those educational processes that are designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the internet which includes the following:

(A) Workshops, seminars, and conferences with substantial interaction by a qualified instructor/facilitator. A sponsor will issue certificates of completion at the end of the class for participants who attended the entire program.

(B) "Blended programs or interactive computer programs" include:

(i) "Group self-study" programs that are based on self-study materials presented in a group format with substantial interaction from a qualified instructor who is responsible for answering participant's questions or who leads the discussion of individual topics presented in the materials.

(ii) "Webinar" is a program that is a web cast and the participants are led by a discussion leader/facilitator that interacts with the web cast instructors. Sponsors will issue certificates of completion at the end of the class.

(2) "Self-study programs" provide ongoing feedback for the participant regarding the learning process without substantial interaction of an instructor/facilitator.

(A) This type of program clearly defines learning objectives and manages the participant through the learning process by:

(i) requiring frequent response to questions that test for understanding of the material presented; providing evaluative feedback to incorrectly answered questions; and

(ii) providing evaluative feedback to correctly answered questions.

(B) Sponsor will provide a certificate of completion upon successfully passing the final exam.

(C) Self-study programs include the following:

(i) programs that are taken on the internet individually and involve the participant answering questions that test for understanding after each section of the course and passing a final exam to earn credit for the course. A certificate of completion is immediately received once the participant successfully passes the final exam.

(ii) courses in which course materials are sent to a participant and after completing the course and the final exam, the participant sends the final exam to the sponsor either electronically or by mail for grading. The sponsor may send the grade either electronically or by mail to the participant.

[(e) The following terms when used in this section, shall have the meanings, given below, unless the context clearly indicates otherwise.]

[(1) A "program" is designed to permit a participant to use a given body of knowledge at a specified level of skill.]

[(2) A "formal group program" is a program that complies with the standards in the board's Rules.]

[(3) A "self-study program" is a program designed to permit a participant to learn a given subject without major interaction with an instructor.]

[(4) A "formal self-study program" is one for which the sponsor:]

[(A) requires and evaluates evidence (such as a workbook or examination paper) the participant has completed the course satisfactorily;]

[(B) provides a certificate based upon evidence of satisfactory completion; and]

[(C) complies with the standards in the board's Rules.]

[(5) A "computer-based interactive format program" is one designed to simulate a classroom learning process by employing structured software or technology-based systems that provide significant ongoing interactive feedback for the participant regarding the learning process. This type of program clearly defines lesson objectives and manages the participant through the learning process by:]

[(A) requiring frequent response to questions that test for understanding of the material presented;]

[(B) providing evaluative feedback to incorrectly answered questions; and]

[(C) providing reinforcement feedback to correctly answered questions.]

[(d) Sponsors are responsible for ensuring that their programs:]

[(1) use appropriate delivery methodology;]

[(2) deliver what participants may reasonably expect based on the program description; and]

[(3) comply with all the standards in the board's Rules.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

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J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.103

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.103, concerning Standards for CPE Program Development.

The amendment to §523.103 will replace the phrase "in areas such as" with the phrase "pertaining to the profession of accounting such as, but not limited to," in subsection (b)(1); delete the phrase "in areas such as" in subsection (b)(1); add the phrase "but not limited to" in subsection (b)(2); and add subsection (c) that states: "(c) Staff meetings or other settings that do not include technical issues that enhance a licensee's professional development can not be claimed for CPE credit."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies what the board expects from courses that increase a CPA's professional competence.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.103. Standards for CPE Program Development.

- (a) (No change.)
- (b) Courses the board regards as increasing the licensee's professional competence include:
 - (1) technical courses pertaining to the profession of accounting such as, but not limited to, ~~in areas such as~~ accounting, audit, tax, management advisory services, and other technical areas of benefit to a licensee and a licensee's employer(s); and
 - (2) non-technical courses such as, but not limited to, communications, ethics, behavioral science, practice management and advanced courses in foreign languages relating to accounting, which are of benefit to a licensee or a licensee's employer(s). Refer to §523.118 of this title (relating to Limitation for Non-Technical Courses).
- (c) Staff meetings or other settings that do not include technical issues that enhance a licensee's professional development can not be claimed for CPE credit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705781

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848

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SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.110

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.110, concerning Establishment of Mandatory CPE Program.

The amendment to §523.110 will delete the phrase "Board Rules and" and add the phrase "Requirements for Licensees" in paragraph (6).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that references the new title of another rule.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.110. Establishment of Mandatory CPE Program.

A licensee shall be responsible for ensuring that CPE credit hours claimed conform to the board's standards as outlined in:

(1) - (5) (No change.)

(6) §523.130 regarding [~~Board Rules and~~] Ethics Course Requirements for Licensees.

(7) - (9) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705729

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.111

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.111 concerning Mandatory CPE Reporting.

The amendment to §523.111 will insert the phrase "or retain" and delete the phrase "Board Rules and" and add the phrase "Requirements for Licensees" in subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that references the new title of another rule.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.111. Mandatory CPE Reporting.

(a) To receive or retain a license, a licensee shall earn and report at least the minimum mandatory CPE credit hours required for the reporting period under §523.112 and §523.130 of this title (relating to Mandatory CPE Attendance and [~~Board Rules and~~] Ethics Course Requirements for Licensees).

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.112

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.112 concerning Mandatory CPE Attendance.

The amendment to §523.112 will delete the phrases "For all" and "completed after January 1, 2005" and ", this CPE". In paragraph (1)(A) replace the words "twelve month" with the word "license". Insert the phrase "CPE earned prior to the first twelve

month license period will not be applied toward the three year requirement." to the end of paragraph (1)(B). In paragraph (3)(A), delete the text "Board Rules and" and insert the phrase "Requirements for Licensees" at the end of paragraph (3)(A). In paragraph (3)(B)(i)(II) add the phrase "professional accounting services or professional". In paragraph (3)(B)(ii) insert the phrase "hours prior to re-entering the workforce.", delete the phrase "a minimum of", delete the phrase "Board Rules and." and insert the phrase "Requirements for Licensees". Insert new paragraph (5) with the text "A licensee who has been granted exemptions under paragraph (4) of this rule and no longer qualifies for the exemption or has been granted retired or disabled status under §515.8 of this title and no longer qualifies for retired or disabled status shall be required to report a minimum of 40 CPE hours prior to re-entry into the work force. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirement for Licensees)."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the amendment will provide greater clarity regarding the continuing professional education requirements necessary to maintain or re-activate a license.

The probable economic cost to persons required to comply with the amendment will vary according to the number of CPE courses the person decides to offer and take.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of

compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.112. Mandatory CPE Attendance.

A licensee shall complete at least 120 hours of CPE in each three-year period, and a minimum of 20 hours in each one-year period. ~~[For all]~~ CPE ~~[completed after January 1, 2005]~~, except as provided by board rule, ~~this CPE~~ shall be offered by board contracted CPE sponsors. The exception to this requirement is an initial licensee, one who has been certified or registered for less than 12 months.

(1) The exception to the requirement of 120 hours of CPE is an initial licensee, one who is paying the license fee for the first time.

(A) To be issued a license that is less than twelve months from the date of certification or registration, the licensee does not have a CPE hour requirement. The first license ~~[twelve-month]~~ period begins on the date of certification and ends with the last day of the licensee's birth month.

(B) To be issued a license for the first full twelve-month license period, the licensee does not have a CPE accrual requirement and can report zero hours. CPE earned prior to the first twelve month license period will not be applied toward the three year requirement.

(C) - (F) (No change.)

(2) (No change.)

(3) The board may consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to report prior to re-entering the workforce ~~[a minimum of]~~ 40 CPE hours. Such CPE hours shall be accrued from the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and ~~[Board Rules and]~~ Requirements for Licensees);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor;

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) (No change.)

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving professional accounting services or professional accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) - (IV) (No change.)

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue [a minimum of] 40 CPE hours prior to re-entering the workforce. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and [Board Rules and] Ethics Course Requirements for Licensees).

(C) - (F) (No change.)

(4) A licensee who has been granted the retired or disabled status under §515.8 of this title (relating to Retirement Status or Permanent Disability) is not required to report any CPE hours.

(5) A licensee who has been granted exemptions under paragraph (4) of this rule and no longer qualifies for the exemption or has been granted retired or disabled status under §515.8 of this title and no longer qualifies for retired or disabled status shall be required to report 40 CPE hours prior to re-entry into the workforce. Such CPE hours shall be earned in the technical area as described in §523.103 and §523.130 of this title (relating to Standards for CPE Program Development and Ethics Course Requirements for Licensees).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §523.114

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.114 concerning Disciplinary Actions Relating to CPE.

The amendment to §523.114 will delete the phrase "Board Rules and" before the text "Ethics Course" and after the text "Ethics Course" insert the following phrase "Requirements for Licensees" in subsection (a). After the text "§523.111 of this title" insert the following text "relating to Mandatory CPE Reporting". After text "§523.112 of this title" insert the following text "relating to Mandatory CPE Attendance". In subsection (d) delete the following text "Public Accountancy".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a

result of adoption of the proposed amendment will be that the amendment will provide greater clarity regarding the persons'/licensees' requirements to complete and document mandatory continuing professional education participation or face disciplinary actions.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.114. *Disciplinary Actions Relating to CPE.*

(a) A licensee who fails to comply with the provisions of §523.130 of this title (relating to [Board Rules and] Ethics Course Requirements for Licensees), §523.111 of this title (relating to Mandatory CPE Reporting) and §523.112 of this title (relating to Mandatory CPE Attendance) may be subject to disciplinary action under the Act, for violation of the Rules of Professional Conduct, §501.94 of this title (relating to Mandatory CPE), which requires compliance with §523.130 of this title (relating to Ethics Course Requirements for Licensees), §523.111 of this title (relating to Mandatory CPE Reporting) and §523.112 of this title (relating to Mandatory CPE Attendance).

(b) - (c) (No change.)

(d) Evidence of falsification, fraud, or deceit in the CPE documentation may necessitate disciplinary action as authorized in the [Public Accountancy] Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705784

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §523.115

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.115, concerning Credits for Instructors and Discussion Leaders.

The proposed amendment to §523.115 will divide the existing §523.115 text so each sentence will now be placed in its own respective subsection from (a) - (d) and add an additional subsection (e) with text "Instructors cannot claim credit for teaching entry level accounting courses."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will provide greater clarity regarding the continuing professional education requirements necessary to maintain a license for a CPA who is a continuing professional education instructor or discussion leader.

The probable economic cost to persons required to comply with the proposed amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is

believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§523.115. Credits for Instructors and Discussion Leaders.

(a) When an instructor or discussion leader serves at a program for which participants receive credit and at a level that contributes to the instructor's or discussion leader's professional competence, credit may be given for preparation and presentation time measured in terms of credit hours.

(b) For the first time a program is presented, instructors may receive up to three times the number of credit hours approved for the program.

(c) For repetitious presentations, the instructors may receive credit only if it can be demonstrated that the subject matter involved was changed sufficiently to require significant additional study or research.

(d) The maximum credit for preparation and presentation cannot exceed 20 hours in the reporting period.

(e) Instructors cannot claim credit for teaching entry level accounting courses.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §523.116

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.116, concerning Credits for Published Articles and Books.

The proposed amendment to §523.116 will replace in the title the following words "Credits for" with the words "Authors of". Also, insert the following text "Authors of published articles and books may claim" before the following text "CPE credit hours". Delete the following text "may be claimed for published articles and books".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be none.

Mr. Treacy has determined that for the first five-year period the proposed amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the amendment will provide greater clarity regarding the continuing professional education requirements and credit for their published works for those CPAs who are published authors.

The probable economic cost to persons required to comply with the proposed amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§523.116. *Authors of [Credits for] Published Articles and Books.*

Authors of published articles and books may claim CPE credit hours [may be claimed for published articles and books] provided they contribute to the professional competence of the licensee. Credit hours for preparation of such publications may be claimed up to 10 hours in any

CPE reporting period. In exceptional circumstances, a licensee may submit a request to the board for additional credit, not to exceed a total of 20 credit hours in the reporting period. The request should be accompanied by a copy of the article(s) or book(s) and an explanation justifying the request for additional CPE hours.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705798

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.117

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.117, concerning Minimum Hours Required Per CPE Reporting Period as a Participant.

The amendment to §523.117 will insert the text "program. To qualify the hours must be from" after the following text "participant in a qualified CPE". Delete the word "in". Delete the text "of the requirement"; after the reference to §523.115 add the text "of this chapter (relating to Credits for Instructors and Discussion Leaders)"; replace the word "title" with the word "chapter", replace "Credits for Instructors and Discussion Leaders and Credits for Writers" with "Authors of".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the amendment will provide greater clarity regarding the requirements to maintain a license.

The probable economic cost to persons required to comply with the amendment will be negligible, but will depend on what particular manner a participant chooses to meet their continuing professional education requirements.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses be-

cause the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.117. Minimum Hours Required Per CPE Reporting Period as a Participant.

A minimum of 20 credit hours per CPE reporting period must be as a participant in a qualified CPE program. To qualify the hours must be from [in] a live classroom instruction and/or self-study if the licensee is claiming credit [of the requirement] as provided for in [§]§523.115 of this chapter (relating to Credits for Instructors and Discussion Leaders) and §523.116 of this chapter [title] (relating to Authors of [Credits for Instructors and Discussion Leaders and Credits for] Published Articles and Books).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705797

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.118

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.118, concerning Limitation for Non-Technical Courses.

The amendment to §523.118 will delete the following text "CPE credit hours may be claimed for non-technical courses limited to not more than 20 credit hours in the reporting period" and insert the following text "A licensee may not claim more than

fifty percent of the total CPE credit hours required from the non-technical area in any reporting period".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will provide greater clarity regarding the continuing professional education requirements and the board's emphasis on technical knowledge, competence, and proficiency.

The probable economic cost to persons required to comply with the amendment will be negligible, but will depend on what particular courses a person/licensee chooses to meet the continuing professional education requirements.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.118. Limitation for Non-Technical Courses.

A licensee may not claim more than fifty percent of the total CPE credit hours required from the non-technical area in any reporting period.

[CPE credit hours may be claimed for non-technical courses limited to not more than 20 credit hours in the reporting period.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §523.119

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.119, concerning Alternative Sources of CPE.

The amendment to §523.119 will in subsection (a)(6) delete the following text "National Association of Accountants' Management Accounting Practices Committee"; renumber the remaining subsections under subsection (a), so the former subsection (a)(7) becomes subsection (a)(6), and the former (a)(8) becomes subsection (a)(7). In subsection (b) replace the following text "must receive prior approval before credit may be claimed." with the following text "should be claimed at the time the license renewal is submitted on the appropriate form "Claiming Credit from a Non-Registered Sponsor" justifying the reason the CPE credit hours are being claimed.". Add the following subsection (c) with the following phrase "Licensees may not claim more than fifty percent of their hours from non-registered sponsors."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the continuing professional education requirements necessary to maintain a license.

The probable economic cost to persons required to comply with the amendment will be negligible, but will depend on what particular courses a participant chooses to take to meet their continuing professional education requirements.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.119. *Alternative Sources of CPE.*

(a) Credit hours may be claimed from other organizations not recognized as formal CPE sponsors. Credit from membership in the committees listed can be claimed using 50 minutes per contact hour at meetings to equal one credit hour:

(1) - (5) (No change.)

~~[(6) National Association of Accountants' Management Accounting Practices Committee;]~~

(6) ~~[(7)]~~ AICPA's Accounting and Review Services Committee (ARSC); and

(7) ~~[(8)]~~ The AICPA's Private Companies Section on Technical Issues Committee.

(b) Credit hours earned from sources other than registered sponsors, or membership on designated committees should be claimed at the time the license renewal is submitted on the appropriate form "Claiming Credit from a Non-Registered Sponsor" justifying the reason the CPE credit hours are being claimed~~[- must receive prior approval before credit may be claimed].~~

(c) Licensees may not claim more than fifty percent of their hours from non-registered sponsors.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848



22 TAC §523.120

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.120, concerning Standards for CPE Reporting.

The amendment to §523.120 will in subsection (a)(1) add the following text "name and identification number" after the text "sponsor".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the continuing professional education reporting requirements.

The probable economic cost to persons required to comply with the amendment will be negligible, but will depend on the method the person/licensee chooses to document the person's continuing professional education participation.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of

compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.120. Standards for CPE Reporting.

(a) Participants in group or self-study programs must document their participation, including:

(1) sponsor name and identification number;

(2) - (5) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.121

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.121, concerning CPE for non-CPA Owners.

The amendment to §523.121 will delete the following text "Board Rules and" in subsection (c). In subsection (c) after the text "Ethics Course" add the following text "Requirements for Licensees".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the existence of non-CPA Owners and their continuing professional education requirements.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.121. CPE for non-CPA Owners.

(a) - (b) (No change.)

(c) Every non-CPA owner of a licensed CPA firm shall complete a board-approved rules and ethics course in accordance with §523.130 of this title (relating to ~~Board Rules and~~ Requirements for Licensees).

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.130

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.130, concerning Board Rules and Ethics Course.

The proposed amendment to §523.130 will delete the text "Board Rules and" and insert the following text "Requirements for Individuals" in Rule name. Delete subsection (b). Renumber subsection (c) to subsection (b) and replace the following text "Beginning on January 1, 2005, every" with the text "A" at the beginning of subsection (b). Delete the following text "after January 1, 2005" from subsection (b). Delete subsection (d). Renumber subsection (e) with subsection (c). In subsection (c) replace "individual" with the word "licensee." In subsection (c) replace the phrase "certificate or registration holder" with "licensee". In subsection (c), add the following text "annual" before the following text "license renewal notice if due." Renumber subsection (f) with subsection (d) and, in subsection (d), replace the text "certificate or registration holder" with the following text "licensee". Also in subsection (d) replace the following text "an interactive computer-based" with the following word "a" and replace "(b)(5)" with "(c)(1)". Renumber subsection (g) with subsection (e). In subsection (e), replace the following text "certificate or registration holder" with "person". Delete subsection (h). Delete the Attached Graphic Figure: 22 TAC §523.130(h).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be none.

Mr. Treacy has determined that for the first five-year period the proposed amendment is in effect the public benefits expected as a result of adoption of the amendment will be greater clarity regarding the ethics course requirements necessary to maintain a license.

The probable economic cost to persons required to comply with the proposed amendment will be negligible, but will depend on the courses taken by persons/licensees.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§523.130. [Board Rules and] Ethics Course Requirements for Licensees.

(a) A candidate [An individual] applying for certification or registration must complete a board-approved four hour ethics course designed to thoroughly familiarize the applicant with the board's Rules of Professional Conduct no more than six months prior to submission of the application. Proof of completion of this course must be submitted with the application.

~~[(b) Prior to January 1, 2005, every licensee must take a board approved two hour ethics course on the board's Rules of Professional Conduct every three years. Licensees shall report completion of the course on the annual license renewal notice at least every third year.]~~

(b) ~~[(e) A [Beginning on January 1, 2005, every] licensee must take a four hour ethics course that has been approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content [after January 1, 2005]) every two years. Licensees shall report completion of the course on the annual license renewal notice at least every second year.~~

~~[(d) For the license renewal due in 2007, every certificate or registration holder must have taken and reported a 4-hour ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005). To transition from the 3-year reporting cycle contained in subsection (b) of this section to the 2-year reporting cycle contained in subsection (e) of this section, those certificate or registration holders that would have been required to report the taking of an ethics course for their license renewal due in 2005 under the 3-year cycle must continue to report the satisfaction of this requirement for their license renewal in 2005; however, either a 2-hour ethics course approved by the board pursuant to §523.133 of this title (relating to Course Content and Board Approval) or a 4-hour ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) will be accepted in satisfaction of this requirement. Those certificate or registration holders that would have been required to report the taking of an ethics course for their license renewal due in 2006 under the 3-year cycle must report the satisfaction of this requirement for their license renewal in 2006; however, that course must be a 4-hour ethics course approved by the board pursuant to §523.131 of this title.]~~

(c) ~~[(e)]~~ A licensee granted retired, permanent disability, or other exempt status is not required to complete the ethics course during the licensee's exempt status. When the exempt status is no longer applicable, the licensee ~~[individual]~~ must complete an ethics course ap-

proved by the board and report it on the annual license renewal notice if due.

(d) ~~[(f)]~~ A licensee ~~[certificate or registration holder]~~ must take the ethics course in a live instructor format or in a ~~[an interactive computer-based]~~ format as defined in §523.102(c)(1) ~~[(b)(5)]~~ of this title (relating to CPE Purpose and Definitions).

(e) ~~[(g)]~~ A person ~~[certificate or registration holder]~~ who does not reside in the state of Texas, who has no clients within this state, and who is current with the ethics course requirements of his state of residence is not required to take the ethics course mandated by this section.

~~[(h) Interpretive Comment: Only a 4-hour course will be board approved after January 1, 2005. If a licensee needs to report an ethics course in 2005, he may take a board approved 2-hour course prior to January 1, 2005; however, he will still need to take a board approved 4-hour ethics course to report no later than his 2007 license renewal date. For example:]~~

~~[Figure: 22 TAC §523.130(h)]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705730

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.131

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.131, concerning Board Approval of Ethics Course Content after January 1, 2005.

The proposed amendment to §523.131 will delete "after January 1, 2005" from the rule name, add the text "The" to the beginning of subsection (a). In subsection (a), delete the following text "Effective January 1, 2005 the", "Board Rules and", and "Course content shall be approved only after the developer of the course demonstrates the course meets the following objectives." Insert the text "Requirements for Licensees", "CPE committee of the", "for initial approval and upon request thereafter. The primary objectives of the Ethics Course shall be to:" Insert new subsections (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(5)(A), (a)(5)(B), and (a)(5)(C) with the following text: "(1) encourage the licensee to become educated in the ethics of the profession; (2) convey the intent of the Board's Rules of Professional Conduct in the licensee's performance of professional accounting services or professional accounting work, and not mere technical compliance, (3) apply ethical judgment in interpreting the rules and determining the public interest. The public interest should be placed ahead of self-interest, even if it means a loss of job or client, (4) emphasize the ethical standards of the profession, as described in this section; and (5) review and discuss the Board's Rules of Professional Conduct and their implications for persons in a variety of practices, including: (A) a licensee engaged in the client practice of public accountancy who performs attest and non-attest services, as defined in §501.52 of this title (relating

to Definitions); (B) a licensee holder employed in industry who provides internal accounting and auditing services; and (C) a licensee employed in education or in government accounting or auditing." Delete former subsection (a)(1) "the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning;" delete former subsection (a)(2) "the course shall be designed to teach the core values of the profession: integrity, objectivity and independence, as ethical principles in addition to rules of conduct;" delete former subsection (a)(3) "the course shall be designed to teach compliance with the spirit and intent of the board's Rules of Professional Conduct, in addition to technical compliance with the Rules; and". Delete former (a)(4) "the course shall address ethical considerations and the application of the board's Rules of Professional Conduct to all aspects of professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice." In subsection (b)(4), insert the word "sufficient"; in section (c), replace the text "To be approved, the course must be taught in either a live instructor format or a computer-based interactive format, as defined in §523.101(b)(5) of this title (relating to CPE Purpose and Definitions)" with the text "Course content shall be approved only after demonstrating, either in a live instructor format or a blended program format or interactive (computer based) format, as defined in §523.102(c)(1) of this title (relating to CPE Purpose and Definitions), that the course contains the underlying intent established in the following criteria: (1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning and the core values of the profession: integrity, objectivity and independence, as ethical principles in addition to rules of conduct; (2) the course shall address ethical considerations and the application of the Board's Rules of Professional Conduct to all aspects of the professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice; and (3) the course shall convey the spirit and intent of the Board's Rules of Professional Conduct in the licensee's performance of accounting services or professional accounting work, and not mere technical compliance." At the beginning of subsection (d), replace the words "Each ethics course approved pursuant to this section will" with the words "Ethics Courses may". At the beginning of subsection (e), replace the phrase "As a part of each course" with the phrase "At the conclusion of each course," the sponsor shall administer a test to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be zero because the amendment does not require the state to do anything.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the proposed amendment will be none.
- C. the additional estimated cost to the state expected as a result of enforcing or administering the proposed amendment will be none.

Mr. Treacy has determined that for the first five-year period the proposed amendment is in effect the public benefits expected

as a result of adoption of the amendment will be greater clarity regarding the ethics course content requirements.

The probable economic cost to persons required to comply with the proposed amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small business.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by this proposed amendment.

§523.131. Board Approval of Ethics Course Content [after January 1, 2005].

(a) The [Effective January 1, 2005 the] content of an ethics course designed to satisfy the ethics CPE requirements of §523.130 of this title (relating to [Board Rules and] Ethics Course Requirements for Licensees) must be submitted to and be approved by the CPE committee of the board for initial approval and upon request thereafter. The primary objectives of the Ethics Course shall be to: [Course content shall be approved only after the developer of the course demonstrates that the course meets the following objectives:]

(1) encourage the licensee to become educated in the ethics of the profession;

(2) convey the intent of the Board's Rules of Professional Conduct in the licensee's performance of professional accounting services or professional accounting work, and not mere technical compliance,

(3) apply ethical judgment in interpreting the rules and determining the public interest. The public interest should be placed ahead of self-interest, even if it means a loss of job or client,

(4) emphasize the ethical standards of the profession, as described in this section; and

(5) review and discuss the Board's Rules of Professional Conduct and their implications for persons in a variety of practices, including:

(A) a licensee engaged in the client practice of public accountancy who performs attest and non-attest services, as defined in §501.52 of this title (relating to Definitions);

(B) a licensee holder employed in industry who provides internal accounting and auditing services; and

(C) a licensee employed in education or in government accounting or auditing.

~~{(1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning;}~~

~~{(2) the course shall be designed to teach the core values of the profession: integrity, objectivity and independence; as ethical principles in addition to rules of conduct;}~~

~~{(3) the course shall be designed to teach compliance with the spirit and intent of the board's Rules of Professional Conduct, in addition to technical compliance with the Rules; and}~~

~~{(4) the course shall address ethical considerations and the application of the board's Rules of Professional Conduct to all aspects of professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice.}~~

(b) To meet the objectives of subsection (a) of this section, a course must include components that cover:

(1) - (3) (No change.)

(4) sufficient case studies that require application of ethical principles, values, and ethical reasoning within the context of the board's Rules of Professional Conduct.

(c) Course content shall be approved only after demonstrating, either in a live instructor format or a blended program format or interactive (computer based) format, as defined in §523.102(c)(1) of this title (relating to CPE Purpose and Definitions), that the course contains the underlying intent established in the following criteria:

(1) the course shall be designed to teach CPAs to achieve and maintain the highest standards of ethical conduct through ethical reasoning and the core values of the profession: integrity, objectivity and independence, as ethical principles in addition to rules of conduct;

(2) the course shall address ethical considerations and the application of the Board's Rules of Professional Conduct to all aspects of the professional accounting work whether performed by CPAs in client practice or CPAs who are not in client practice; and

(3) the course shall convey the spirit and intent of the Board's Rules of Professional Conduct in the licensee's performance of accounting services or professional accounting work, and not mere technical compliance.

~~{(e) To be approved, the course must be taught in either a live instructor format or a computer-based interactive format, as defined in §523.101(b)(5) of this title (relating to CPE Purpose and Definitions).}~~

~~(d) Ethics Courses may [Each ethics course approved pursuant to this section will] be reevaluated at least every three years or earlier as required by the board.~~

~~(e) At the conclusion of each course, [As a part of each course,] the sponsor shall administer a test to determine whether the program participants have obtained a basic understanding of the course content,~~

including the need for a high level of ethical standards in the accounting profession.

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

TRD-200705792

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848

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22 TAC §523.132

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.132, concerning Board Contracted Ethics Instructors after January 1, 2005.

The amendment to §523.132 will delete "after January 1, 2005" from the description of the rule; add the text "The" to the beginning of subsection (a); delete the following text "Effective January 1, 2005, the" and the following text "after January 1, 2005". In subsection (a)(1) after the text "Texas" insert the following text "or that the instructor is team teaching with a certified public accountant licensed in Texas". Delete the following text "within the last three years or". In subsection (b)(1) delete the following text "or by June 30, 2005, whichever is later,". In subsection (b)(5) delete the text "Public Accountancy". Delete subsection (d) and replace with the following text "An instructor must submit a current resume with the contract."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the requirements for ethics course instructors.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.132. Board Contracted Ethics Instructors [after January 1, 2005].

(a) The [Effective January 1, 2005, the] board may contract with any instructor wishing to offer an ethics course approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) who can demonstrate that:

(1) the instructor is a certified public accountant licensed in Texas or that the instructor is team teaching with a certified public accountant licensed in Texas and has completed the board's ethics training program [~~within the last three years or~~] as required by the board;

(2) - (3) (No change.)

(b) An instructor demonstrates that he is qualified to teach ethical reasoning upon proof that he has:

(1) at the time of application [~~or by June 30, 2005, whichever is later,~~] obtained education in ethics substantially equivalent to a minimum of 6 hours of credit from an accredited University, College or Community College, of which at least three hours must be in organizational ethics;

(2) - (4) (No change.)

(5) goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the [Public Accountancy] Act.

(c) The board may refuse to contract, refuse to renew a contract or cancel the contract of any instructor who has engaged in conduct rendering that instructor unsuitable for teaching ethics.

(d) An instructor must submit a current resume with the contract.

{(d) Interpretive comments: To have goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Public Accountancy Act an instructor must refrain from using the instruction of an ethics course as a marketing tool for other products and services offered by the instructor. An

instructor must be free from conflicts of interest with the board in both fact and appearance. Representation of a respondent or a complainant in a disciplinary proceeding pending before the board creates the appearance of a conflict of interest.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.133

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Public Accountancy (Board) proposes the repeal of §523.133, concerning Course Content and Board Approval.

The proposed repeal of §523.133 will remove a rule that is repetitive of §523.131.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero because the repeal does not require the state to do anything.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be the elimination of a redundant rule.

The probable economic cost to persons required to comply with the repeal will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on December

31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§523.133. Course Content and Board Approval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705736

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.140, concerning Program Standards.

The amendment to §523.140 will replace the sentence "The stated program objectives should clearly communicate the specific concepts and skills the program will transfer to persons completing it." with the following sentences "The sponsor "program" must clearly state in the course materials, registration materials and advertisements related to the course, the objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended credit hours. Sponsors are responsible for distributing accurate information about their programs." in subsection (a); add subsection (1) with the following statements "The stated learning objectives should clearly communicate the specific concepts and skills the program will transfer to persons completing it."; renumber subsection (b) to paragraph (2): replace the word "should" with the word "must" in paragraph (2); add a new subsection

"(b)" which states "The program developer must organize the program around the stated learning objectives. The course materials must be periodically reviewed to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter."; add paragraph (1) that reads "The program developer should provide the instructor with separate materials that emphasize sections of the course that need reinforcement, if appropriate;"; add paragraph (2) which reads "The program developer should provide materials for the participants that explain the learning objective in detail."; replace the phrase "A program developer" with the word "Instructors" in subsection (c); replace the text "The program developer must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued where appropriate and obsolete materials should be deleted. Between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes." with the new text "Course material should be reviewed by a qualified party other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In case of short or once only programs, more reliance may be placed on the competence of the presenter." in subsection (d); replace the text "Course material should be reviewed by a qualified person(s) other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In the case of short or once only programs, more reliance may be placed on the competence of the presenter." with the text "All programs must provide for some means to evaluate both the competence of the instructor and the course material. Refer to §523.141 of this title (relating to Evaluation)." in subsection (e); replace the text "Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended credit hours. After January 1, 2005, an ethics course not approved by the board under §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) must clearly state in the course materials, registration materials and any advertisements related to the course that it is not approved for ethics credit pursuant to §523.131 of this title and the course will not satisfy the ethics course requirements of §523.130 of this title (relating to Board Rules and Ethics Course). Sponsors are responsible for distributing accurate information about their programs." with the text "Self-study programs must conform to the requirements outlined in §523.102(c)(2) of this title (relating to CPE Purpose and Definitions)." in subsection (f); replace the text "Instructors must be qualified both with respect to program content and teaching methods used. Sponsors should evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors. After January 1, 2005, the sponsor of an ethics course taught by an instructor who is not under contract with the board pursuant to §523.132 of this title (relating to Board Contracting Ethics Instructors after January 1, 2005) must clearly state in the course materials, registration materials and any advertisements related to the course that the instructor is not a board contracted ethics instructor under §523.132 of this title and the course will not satisfy the ethics course requirements of §523.130 of this title (relating to Board Rules and Ethics Course)." with the text "Sponsors are responsible for ensuring the participants register their attendance during the program. The sponsor

is responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early. Refer to §523.142 of this title (relating to Time Credit Measurement)." in subsection (g); and replace "Sponsors should comply with the standard by encouraging: (1) enrollment only by eligible participants; (2) timely distribution of materials; (3) completion of any advance preparation; and (4) assigning the appropriate number of credit hours for participants who arrive late or leave before a program is completed. The number of participants and physical facilities should be consistent with the teaching method(s) specified. The learning environment is affected by the number of participants and by the quality of the physical facilities. Sponsors have an obligation to pay serious attention to these two factors. The maximum number of participants for a case-oriented discussion program should be considerably less than for a lecture program. Class size, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and should be carefully controlled." with the text "Sponsors must comply with all CPE rules including §523.143 of this title (relating to Sponsor's Record)." in subsection (h).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the ethics course program standards.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of

compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.140. Program Standards.

(a) The sponsor "program" must clearly state in the course materials, registration materials and advertisements related to the course, the objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended credit hours. Sponsors are responsible for distributing accurate information about their programs.

(1) The stated program objectives should clearly communicate the specific concepts and skills the program will transfer to persons completing it.

(2) ~~[(b)]~~ All programs must clearly identify what prerequisites are necessary for enrollment, so a potential participant can determine whether they are qualified to participate in and benefit from the program. If no prerequisite is necessary, a statement to this effect must ~~[should]~~ be made.

(b) The program developer must organize the program around the stated learning objectives. The course materials must be periodically reviewed to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(1) The program developer should provide the instructor with separate materials that emphasize sections of the course that need reinforcement, if appropriate;

(2) The program developer should provide materials for the participants that explain the learning objective in detail.

(c) Instructors ~~[A program developer]~~ must be qualified both with respect to program content and teaching methods used ~~[prepared to demonstrate satisfactorily their competence to design the program at a high quality level]~~. Sponsors should evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors.

(d) Course material should be reviewed by a qualified party other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In case of short or once only programs, more reliance may be placed on the competence of the presenter.

~~[(d)]~~ The program developer must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued where appropriate and obsolete materials should be deleted. Between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes.

(e) All programs must provide for some means to evaluate both the competence of the instructor and the course material. Refer to §523.141 of this title (relating to Evaluation).

{(e) Course material should be reviewed by a qualified person(s) other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In the case of short or once only programs, more reliance may be placed on the competence of the presenter.}

{(f) Self-study programs must conform to the requirements outlined in §523.102(c)(2) of this title (relating to CPE Purpose and Definitions).}

{(f) Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended credit hours. After January 1, 2005, an ethics course not approved by the board under §523.131 of this title (relating to Board Approval of Ethics Course Content after January 1, 2005) must clearly state in the course materials, registration materials and any advertisements related to the course that it is not approved for ethics credit pursuant to §523.131 of this title and the course will not satisfy the ethics course requirements of §523.130 of this title (relating to Board Rules and Ethics Course). Sponsors are responsible for distributing accurate information about their programs.}

{(g) Sponsors are responsible for ensuring the participants register their attendance during the program. The sponsor is responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early. Refer to §523.142 of this title (relating to Time Credit Measurement).}

{(g) Instructors must be qualified both with respect to program content and teaching methods used. Sponsors should evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors. After January 1, 2005, the sponsor of an ethics course taught by an instructor who is not under contract with the board pursuant to §523.132 of this title (relating to Board Contracted Ethics Instructors after January 1, 2005) must clearly state in the course materials, registration materials and any advertisements related to the course that the instructor is not a board contracted ethics instructor under §523.132 of this title and the course will not satisfy the ethics course requirements of §523.130 of this title (relating to Board Rules and Ethics Course).}

{(h) Sponsors must comply with all CPE rules including §523.143 of this title (relating to Sponsor's Record).}

{(h) Sponsors should comply with the standard by encouraging:}

{(1) enrollment only by eligible participants;}

{(2) timely distribution of materials;}

{(3) completion of any advance preparation; and}

{(4) assigning the appropriate number of credit hours for participants who arrive late or leave before a program is completed.}

{(i) The number of participants and physical facilities should be consistent with the teaching method(s) specified. The learning environment is affected by the number of participants and by the quality of the physical facilities. Sponsors have an obligation to pay serious attention to these two factors. The maximum number of participants for a case-oriented discussion program should be considerably less than for a lecture program. Class size, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and should be carefully controlled.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.141

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.141 concerning Evaluation.

The amendment to §523.141 will replace the phrase "take the form of:" with the phrase "consist of evaluation forms or questionnaires upon completion of the program."; and delete subsections (b)(1), (b)(2), and (b)(3); add subsection (d) with the sentence "(d) Sponsors are responsible for collecting evaluation forms from CPA participants."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the ethics course evaluations and questionnaires.

The probable economic cost to persons required to comply with the amendment will be negligible, but will depend on the method the sponsors use to collect the evaluation forms and questionnaires.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the

statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.141. Evaluation.

(a) (No change.)

(b) Evaluations should consist of evaluation forms or questionnaires upon completion of the program. ~~[take the form of:]~~

~~[(1) pretests for advance preparation; and/or]~~

~~[(2) post-tests for effectiveness of the program; and/or]~~

~~[(3) other evaluation forms or questionnaires completed at the end of the program or later.]~~

(c) (No change.)

(d) Sponsors are responsible for collecting evaluation forms from CPA participants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §523.142

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.142 concerning Program Time Credit Measurement.

The amendment to §523.142 will delete the phrase "The shortest recognized program should consist of one contact hour." in subsection (a); delete the word "group" in subsection (a); replace the sentence "Under this standard, a credit hour is granted only for each contact hour" with the sentence "One-half CPE credit increments (equal to 25 minutes) are permitted after the first contact hour has been earned in a given learning activity" in subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the program length requirements.

The probable economic cost to persons required to comply with the amendment will be negligible, but will depend on the courses offered or taken.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.142. Program Time Credit Measurement.

(a) All programs should be measured in terms of 50-minute contact hours. ~~[The shortest recognized program should consist of one contact hour.]~~ A contact hour is 50 minutes of continuous participation in a ~~[group]~~ program. One-half CPE credit increments (equal to 25 minutes) are permitted after the first contact hour has been earned in a given learning activity. ~~[Under this standard, a credit hour is granted only for each contact hour.]~~

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705789

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



22 TAC §523.143

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.143, concerning Sponsor's Record.

The amendment to §523.143(a) will add the letter "(b)" to the reference to §523.141 in paragraph (7).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the continuing professional education sponsor's record requirements.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b)

cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.143. *Sponsor's Record.*

(a) In order to support the reports required of participants, the sponsor of group or self-study programs must retain for an appropriate period:

(1) - (6) (No change.)

(7) evaluation of program as directed in §523.141(b) of this title (relating to Evaluation).

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

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22 TAC §523.144

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.144, concerning Board Registered CPE Sponsors after January 1, 2005.

The amendment to §523.144 will delete the text "after January 1, 2005" in the rule's title; delete the text "Board Rules and" from subsection (a)(2); add the text "Requirements for Licensees" to subsection (a)(2); delete the text "To implement the program initially, sponsors previously registered with the board will be assigned an initial registration term based on the month of their current registration" from subsection (f); replace the word "paragraph" with "subsection" and replace the phrase "section 523.147 of this Chapter" with "§523.147 of this title (relating to Sponsor Review Program)" in subsection (i).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the requirements for a board registered continuing professional education sponsor.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.144. Board Registered CPE Sponsors [after January 1, 2005].

(a) The board may enter into an agreement with any sponsor of CPE programs to become a board registered CPE sponsor where the sponsor, in the opinion of the board, demonstrates that it will comply with its obligations to the board and that its programs will conform to the board's standards as outlined in:

(1) (No change.)

(2) §523.130 of this title (relating to [Board Rules and] Ethics Course Requirements for Licensees), (if applicable);

(3) - (5) (No change.)

(b) - (e) (No change.)

(f) [To implement the program initially, sponsors previously registered with the board will be assigned an initial registration term based on the month of their current registration.] The board will not prorate the registration payment for an organization for less than one year. Upon renewal in the second and succeeding years, the registration amount may be increased to cover the costs of review of sponsors and individual courses.

(g) - (h) (No change.)

(i) A sponsor that requests reinstatement may do so by submitting a completed application and paying the fee provided for in subsection [paragraph] (c) of this section. The application for reinstatement must be accompanied with a list of the course(s) proposed to be offered. From that list the board will select one or more courses that must successfully pass the review pursuant to §523.147 of this title (relating to Sponsor Review Program) [section 523.147 of this Chapter], before any course can be offered.

(j) - (k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §523.145

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.145, concerning Obligations of the Sponsor.

The amendment to §523.145 will add a new subsection (a) with the following text: "(a) Sponsors must comply with the program standards as stated in §523.140 of this title (relating to Program Standards)."; subsection (a) will be relettered subsection (b); replace the word "persons" with "parties" in subsection (b)(3); reletter subsection (b) to subsection (c) and delete the text "Sponsor reviews will not commence until after June 1, 2005." in new subsection (c).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding the obligations of a continuing professional education program sponsor.

The probable economic cost to persons required to comply with the amendment will be negligible, but will depend on the methods used to create the required writing.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.145. Obligations of the Sponsor.

(a) Sponsors must comply with the program standards as stated in §523.140 of this title (relating to Program Standards).

(b) [(a)] In consideration for registering as a CPE sponsor each organization shall certify in writing, to the following:

(1) "We understand that after acceptance of the application or reapplication for a registration by the board we may advise prospective attendees of the program sponsor registration, our sponsor number, and the number of credit hours recommended. We further agree that if we notify licensees of this registration we shall do so by use of the following language, 'We are registered with the Texas State Board of Public Accountancy as a CPE sponsor. This registration does not constitute an endorsement by the board as to the quality of our CPE program.'"

(2) "We understand that our advertising shall not be false or misleading."

(3) "We agree that parties [persons] designated by the board may inspect our facilities, examine our records, attend our courses or seminars at no charge, and review our program to determine compliance with the sponsor registration requirements, CPE standards and applicable board rules."

(4) "We understand and agree that if we fail to comply with the registration requirements or fail to meet acceptable standards in our programs, the sponsor registration may be terminated at any time by the board, the sponsor registration or renewal application may be denied, and notice of such termination or denial may be provided to licensees by the board."

(c) [(b)] Every board registered CPE sponsor shall cooperate fully with the board's sponsor review program. At least every three years a sponsor will undergo a sponsor review. This cooperation shall include, but not be limited to providing information, records and access to programs and instructors as requested. Failure to cooperate with the program shall be grounds for terminating the registration. [Sponsor reviews will not commence until after June 1, 2005.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 21, 2007.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §523.147

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.147, concerning Sponsor Review Program.

The amendment to §523.147 will add the text "comply with all applicable Board rules including §523.102 of this title (relating to CPE Purpose and Definitions), §523.103 of this title (relating to Standards for CPE Program Development), and this subchapter and".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity and awareness of the sponsor review program designed to ensure that CPE sponsors comply with board mandated requirements.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.147. Sponsor Review Program.

(a) - (d) (No change.)

(e) The procedures used by the Reviewers in monitoring of sponsors of CPE may include, but not be limited to:

(1) - (6) (No change.)

(7) determining that courses offered by board-registered CPE sponsors comply with all applicable Board rules including §523.102 of this title (relating to CPE Purpose and Definitions), §523.103 of this title (relating to Standards for CPE Program Development), and this subchapter and provide that:

(A) - (C) (No change.)

(8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200705785

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



CHAPTER 525. CRIMINAL BACKGROUND INVESTIGATIONS

22 TAC §525.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §525.1, concerning Applications for the Uni-

form CPA Examination, Issuance of the CPA Certificate, a License, or Renewal of a License for Individuals with Criminal Backgrounds.

The amendment to §525.1 will delete ", or Renewal of a License for Individual with Criminal Backgrounds" from the title; in subsection (a) replace the text "shall not examine" with "may deny", replace the text "CPA candidate" with "candidate's application to take the CPA exam for a period not to exceed five years from the date of application, and shall not"; delete the phrase "which results in incarceration" from subsection (a); replace the text "not examine a CPA candidate" with "deny a candidates' application to take the CPA exam, the application to"; delete the phrase "or renew a license," in subsection (b); delete the text "provided by accountants" from subsection (b)(2); replace the word "person" with "individual" and delete the word "and" in subsection (b)(3); insert a new subsection (b)(5) that states "fraud or dishonesty as an element of the offense; and"; insert a new subsection (b)(6) that states "all conduct indicating a lack of fitness to serve the public as a professional accountant."; replace the phrase "sit for" with the word "take" in subsection (e); delete the text "initial examination" and "and on those reexamination candidates" in subsection (e)(2); replace the word "scores" for the formerly used word "grades" and replace the word "take" for the formerly used words "sit for" in subsection (e)(3); insert a new subsection (f) that states "A candidate that has not been permitted to take the CPA exam as a result of having been convicted of a felony offense must provide evidence of rehabilitation upon rehabilitation as the board may request"; reletter the original subsection (f)(1) - (3) as subsection (g)(1) - (3); and delete current subsections (g) and (h) (proposed as new §525.2).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not require the state to do anything.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clarifies the board's options when considering applications for the Uniform CPA Examination, issuance of the CPA certificate, a license, or renewal of a license for individuals with criminal backgrounds and provides notice of what the board expects from those applicants.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§525.1. Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, or a License [; or Renewal of a License for Individuals with Criminal Backgrounds].

(a) The board may deny ~~[shall not examine]~~ a candidate's application to take the CPA exam for a period not to exceed five years from the date of application, and shall not ~~[CPA candidate;]~~ issue the CPA certificate, ~~or~~ issue an initial license, or renew a license, and shall revoke a current license, if the board finds that the applicant or licensee has been convicted of a felony offense ~~[which results in incarceration]~~ or upon revocation of applicant's or licensee's felony probation, parole, or mandatory supervision.

(b) The board may deny a candidates' application to take the CPA exam ~~[not examine a CPA candidate]~~, the application to issue the CPA certificate, or the application to issue an initial license, [or renew a license] if the board finds that the individual applying has been convicted of a felony or misdemeanor offense which directly relates to the practice of public accountancy. In determining whether the felony or misdemeanor conviction directly relates to such duties and responsibilities, the board shall consider:

(1) (No change.)

(2) the relationship of the crime to the board's statutory responsibility to ensure that persons professing to practice public accountancy maintain high standards of competence and integrity in light of the reliance of the public, and the business community in particular, on the reports and other services ~~[provided by accountants];~~

(3) the extent to which a license to practice public accountancy might offer an opportunity to engage in further criminal activity of the same type as that in which the person [individual] was previously involved; ~~[and]~~

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a certified public accountant or public accountant; ~~[;]~~

(5) fraud or dishonesty as an element of the offense; and

(6) all conduct indicating a lack of fitness to serve the public as a professional accountant.

(c) - (d) (No change.)

(e) The following procedures shall apply in the processing of an application to take [sit for] the uniform CPA examination.

(1) (No change.)

(2) The board may submit identifying information to the Texas Department of Public Safety and or other appropriate agencies on board letterhead requesting conviction records on all ~~[initial examination]~~ candidates ~~[and on those reexamination candidates]~~ about whom the executive director finds evidence to warrant a record search.

(3) The board will review the conviction records of candidates and will approve or disapprove applications as the evidence warrants. If the requested information is not provided by the Texas Department of Public Safety and or other appropriate agencies at least 10 days prior to the examination, a candidate may be permitted to take ~~[sit for]~~ the uniform CPA examination, with his or her scores [grades] subject to being voided. A candidate may have his or her scores [grades] voided or may be denied the opportunity to take ~~[sit for]~~ the uniform CPA examination on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

(4) (No change.)

(f) A candidate that has not been permitted to sit for the CPA exam as a result of having been convicted of a felony offense must provide evidence of rehabilitation as the board may request.

(g) [(f)] The following procedure shall apply in the processing of an application for issuance of the CPA certificate.

(1) The individual will be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor.

(2) The board may submit identifying information to the Texas Department of Public Safety and or other appropriate agencies on board letterhead requesting conviction records on individuals requesting issuance of the CPA certificate.

(3) The board will review the individual applications and the conviction records of applicants and will approve or disapprove applications as the evidence warrants. No CPA certificate or initial license may be issued to an individual whose application for a CPA certificate has been denied. The board may disqualify a person from receiving a CPA certificate or initial license on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

~~[(g)]~~ The following procedure shall apply when renewing a license annually;]

~~[(1)]~~ Each licensee will be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor of which the board has not previously been informed. If the licensee responds in the negative and pays the required license fee, a renewal license will be issued in accordance with established procedures. If the licensee responds affirmatively and pays the required license fee, the board may submit identifying information on board letterhead to the Texas Department of Public Safety and other appropriate agencies requesting conviction records on the individual;]

~~[(2)]~~ The board will review the conviction records and either approve or deny the application for a renewal license as the evidence warrants. The board will refund any renewal fee submitted if the application is denied. The board may suspend or revoke or refuse to

renew an annual license on the basis of a prior conviction pursuant to a hearing as provided for in the Act.}

{(h) In the event the board suspends or revokes a valid license or denies a person a license or certificate or the opportunity to sit for the uniform CPA examination or voids the grades of a candidate because of a person's prior conviction of a crime and the relationship of the crime to the license and certificate pursuant to a hearing as provided for in the Act the board shall notify the person in writing:}

{(1) of the reasons for the suspension, revocation, denial, or disqualification;}

{(2) that the person, after exhausting administrative appeals, may file an action in district court in Travis County, for review of the evidence presented to the board and its decision in accordance with the Act;}

{(3) that a person must begin the judicial review within 30 days after the board's decision is final and appealable; and}

{(4) that the earliest date a person may appeal is when a motion for rehearing is denied, or when the time for filing a motion for rehearing has expired and no motion has been filed.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §525.2

The Texas State Board of Public Accountancy (Board) proposes new §525.2, concerning Renewal of a License for Individuals with Criminal Backgrounds.

The new §525.2 is a restatement of language currently found in §525.1(g) and (h). The term "person" is replaced with "individual" to provide a broader application of the requirements of the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be none; it is believed that any loss in licensing revenue will be offset by savings in enforcement investigations.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will make it easier for the Board to become aware of any criminal conviction against a li-

cense holder, thereby facilitating investigations into possible violations of the board's rules and the Texas Public Accountancy Act.

The probable economic cost to persons required to comply with the new rule will be negligible, but will depend on the manner of completing and returning the annual renewal form.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule does not impose any duties or obligations on small businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December 31, 2007. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§525.2. Renewal of a License for Individuals with Criminal Backgrounds.

(a) The following procedure shall apply when renewing a license annually.

(1) Each licensee will be asked to respond, under penalty of perjury, to the question if he or she has ever been convicted of a felony or misdemeanor of which the board has not previously been informed. If the licensee responds in the negative and pays the required license fee, a renewal license will be issued in accordance with established procedures. If the licensee responds affirmatively and pays the required license fee, the board may submit identifying information on board letterhead to the Texas Department of Public Safety and other appropriate agencies requesting conviction records on the individual.

(2) The board will review the conviction records and either approve or deny the application for a renewal license as the evidence warrants. The board will refund any renewal fee submitted if the application is denied. The board may suspend or revoke or refuse to renew an annual license on the basis of a prior conviction pursuant to a hearing as provided for in the Act.

(b) In the event the board suspends or revokes a valid license or denies an individual a license or certificate or the opportunity to sit

for the uniform CPA examination or voids the grades of a candidate because of an individual's prior conviction of a crime and the relationship of the crime to the license and certificate pursuant to a hearing as provided for in the Act the board shall notify the person in writing:

(1) of the reasons for the suspension, revocation, denial, or disqualification;

(2) that the individual, after exhausting administrative appeals, may file an action in district court in Travis County, for review of the evidence presented to the board and its decision in accordance with the Act;

(3) that an individual must begin the judicial review within 30 days after the board's decision is final and appealable; and

(4) that the earliest date an individual may appeal is when a motion for rehearing is denied, or when the time for filing a motion for rehearing has expired and no motion has been filed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705733

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 305-7848



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department) proposes the repeal of §§33.13 - 33.15, 33.61 - 33.63, 33.66, 33.112, 33.122, 33.123, 33.125, 33.131 - 33.135, 33.140, 33.301 - 33.311, 33.314, 33.315, 33.317 - 33.320, 33.331, 33.334 and 33.351 - 33.358 and new §§33.1 - 33.7, 33.20, 33.21, 33.30, 33.40, 33.41, 33.60, 33.70 - 33.72, concerning the medical and dental programs under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, known in Texas as the Texas Health Steps (THSteps) Program.

BACKGROUND AND PURPOSE

Texas Health Steps is the Texas name for the federally-mandated Medicaid service known as EPSDT. EPSDT provides medical and dental check-ups, diagnosis, and treatment to Medicaid clients from birth through age 20. By authorization of HHSC, the department operates and administers the outreach and informing, medical and dental screening, and dental treatment services components of EPSDT.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that

agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 33.13 - 33.15, 33.61 - 33.63, 33.66, 33.112, 33.122, 33.123, 33.125, 33.131 - 33.135, 33.140, 33.301 - 33.311, 33.314, 33.315, 33.317 - 33.320, 33.331, 33.334, and 33.351 - 33.358 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Current rules are proposed for repeal and the new proposed rules represent a more succinct, understandable, and user-friendly set of rules. Additionally, the proposed rules will change initial eligibility for a dental check-up, which will support an HHSC and department THSteps dental program initiative called, First Dental Home Initiative.

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions

Proposed §33.1 describes the purpose and application of the rules in Chapter 33. Section 33.2 sets forth the definitions used in Chapter 33. Section 33.3 describes the outreach and informing obligations and support services provided to clients by THSteps. Section 33.4 describes how THSteps receives and refers complaints from all sources. Section 33.5 describes the requirements for medical and dental providers to participate in THSteps. Section 33.6 describes the primary responsibilities of all THSteps providers. Section 33.7 describes exceptions to the timely delivery of THSteps services.

Subchapter B. Client Rights

Section 33.20 and §33.21 describe various client rights, including freedom of choice.

Subchapter C. Confidentiality

Section 33.30 describes the laws protecting confidentiality of client records and the circumstances under which client information can be shared.

Subchapter D. Eligibility and Periodicity

Section 33.40 and §33.41 describe the age restrictions related to eligibility for THSteps services and the periodicity requirements and exceptions for check-ups. The proposed rules reflect a change from the current rules regarding the minimum age for client eligibility for routine oral examination and preventive services. It was changed from one year of age to six months of age or at the eruption of the primary teeth, whichever occurs first. The proposed new rules also reflect an alternative periodicity schedule of increased frequency for clients under the age of three that are identified as being at high risk of developing dental disease.

Subchapter E. Medical Check-ups

Section 33.60 describes the federally-mandated medical check-up services.

Subchapter F. Dental Services

Section 33.70 identifies the categories of dental services that are available to clients in addition to check-ups, and the fact that prior authorization may be required for some services. Section 33.71 describes limitations and exceptions regarding orthodontic services, including prior authorization that may not be transferred. Section 33.72 describes the purpose of dental utilization reviews and the fact they may result in recoupment, administrative actions, or sanctions.

FISCAL NOTE

Jann Melton-Kissel, Director of the Specialized Health Services Section, has determined that for each year of the first five-year period that the sections are in effect, there will be fiscal implications to state government as a result of enforcing and administering the sections as proposed. There will be increases in general revenue expenditures for the following state Fiscal Years (FY): approximately \$2.1 million in FY 2008; \$2.2 million in FY 2009; \$2.3 million in FY 2010; \$2.3 million in FY 2011; and \$2.3 million in FY Year 2012. There will be no impact on local government.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Melton-Kissel also has determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. Interpretation of the rules determined that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Melton-Kissel, Director of the Specialized Health Services Section, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The anticipated public benefit is a clearly worded and succinct set of rules that will facilitate understanding of providers and recipients about benefits, services, rights and responsibilities associated with the THSteps program. Additionally, clients will be eligible to receive an earlier oral health assessment and preventive care. Clients under the age of three, who are identified as being at high risk of developing dental disease, can receive more frequent monitoring and preventive care.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce the risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Maria Vega, THSteps Branch, Department of State Health Services, 1100 West 49th Street MC-1938, Austin, Texas 78756, (512) 458-7111, extension 3003 or by e-mail to Maria.Vega@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §33.1 - 33.7

STATUTORY AUTHORITY

The proposed new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rules affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.1. Purpose and Application.

(a) The Texas Medicaid Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program is a Title XIX federally mandated program of prevention, diagnosis, and treatment for Medicaid clients from birth through age 20. In Texas, EPSDT is known as the Texas Health Steps (THSteps) Program. The Texas Department of State Health Services (department), by authorization of the Health and Human Services Commission (HHSC), operates and administers the outreach and informing, medical and dental check-ups, and the dental treatment utilization components of this program.

(b) The rules in this chapter apply to the medical and dental check-up, dental treatment, dental utilization review, and the outreach and informing components of THSteps.

§33.2. Definitions.

The following words or terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) Authorized adult--A person, including an adult related to the child, who is authorized by a child's parent or guardian to accompany that child to a THSteps medical or dental check-up or treatment visit.

(2) Client--Any individual under the age of 21 who has been determined eligible for Medicaid.

(3) Department--Department of State Health Services.

(4) EPSDT--Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) is a mandatory program under Medicaid that provides medical and dental check-ups, diagnosis, and treatment to eligible clients from birth through age 20. EPSDT is known in Texas as Texas Health Steps (THSteps).

(5) Guardian--An individual legally authorized to make decisions, including medical consent, on behalf of a minor.

(6) HHSC--Health and Human Services Commission.

(7) Medicaid--The medical assistance program implemented by the State of Texas under the provisions of Title XIX of the Social Security Act, as amended, at 42 USC, §1396, et seq.

(8) Medically necessary--Medical services that are supported by documentation which show the services are:

(A) reasonable and necessary to prevent illness, medical or dental conditions, or provide early screening, interventions, and/or treatments for conditions that cause suffering or pain, cause

physical deformity or limitations in function, threaten to cause or worsen a disability, cause illness or infirmity of a client, or endanger life;

(B) consistent with health care practice guidelines and standards that are issued by professionally recognized health care organizations or governmental agencies;

(C) consistent with the diagnoses of the conditions;

(D) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;

(E) not experimental or investigative; and

(F) not primarily for the convenience of the client or provider.

(9) OIG--Office of Investigator General at the Health and Human Services Commission.

(10) THSteps--Texas Health Steps (THSteps) is the Texas name for the federally-mandated Medicaid program known as EPSDT.

(11) TMPPM--Texas Medicaid Provider Procedures Manual.

(12) TSBDE--The Texas State Board of Dental Examiners.

§33.3. Outreach, Informing, and Support Services.

(a) The department, in collaboration with HHSC or its designee, informs clients and their families about THSteps benefits and services no later than 60 days after the Medicaid certification date and on a periodic basis thereafter using a combination of methods including written, oral, and in-person contact. Methods for informing include, but are not limited to, one or more of the following options: written or printed correspondence, telephone contact, or an in-person interaction with a THSteps outreach worker, which may include contractors designated and authorized to perform this function. THSteps uses procedures and methods suitable for effectively informing clients and their families who are illiterate, visually impaired, hard of hearing, or who cannot understand the English language.

(b) Clients and families who become eligible for Medicaid after a period of ineligibility also are informed about THSteps benefits and services upon recertification and on a periodic basis thereafter.

§33.4. Receipt and Referral of Complaints and Allegations.

The department receives and refers, in accordance with state law and department policy, complaints and allegations of fraud, abuse, or waste regarding THSteps services, providers, and clients. The department accepts complaints and allegations in either written or verbal form and from any source.

§33.5. THSteps Provider Participation Requirements.

(a) A THSteps medical check-up provider must be properly licensed, as required under state law, and must be a:

(1) Doctor of Medicine or Doctor of Osteopathy;

(2) public or private health care provider or facility that can perform the required medical check-up procedures under a physician's direction and responsibility;

(3) advanced practice nurse whose educational curriculum included courses of study in advanced pediatric physical assessment of infants, children and adolescents; or

(4) physician assistant.

(b) A THSteps dental provider must be either a Doctor of Dental Surgery or a Doctor of Dental Medicine who is currently licensed by the TSBDE.

(c) THSteps providers have the right to limit their practice and the right to choose whether to serve an eligible client, but providers must comply with all related requirements of the TMPPM and all relevant laws and regulations prohibiting discrimination, including 1 TAC §354.1002 (relating to Compliance with Civil Rights Act).

§33.6. THSteps Provider Responsibilities.

(a) The primary responsibilities of THSteps medical and dental providers are to:

(1) operate in accordance with the laws, rules, regulations, and standards of care relating to the practice of their respective profession;

(2) cease providing THSteps services and notify HHSC or its designee if the provider's professional license is suspended or revoked, unless the suspension or revocation is probated in its entirety and without conditions or limitations;

(3) conduct check-ups and treatment services according to policies and procedures as published in the TMPPM and Medicaid bulletins and in accordance with the policies and procedures of the department;

(4) provide clinic surroundings which will establish a good relationship between clinic personnel, the client and the client's family;

(5) interpret and explain check-up and treatment results to the client or the client's parent, guardian, or authorized adult, during or immediately after the check-up;

(6) make referrals for needed follow-up diagnosis and treatment services as indicated; and

(7) assure that a parent, guardian or authorized adult who accompanies a client under age 15 to a THSteps medical or dental check-up or treatment visit, continues to wait for the client while the check-up or treatment takes place. Entities exempt from this parental accompaniment requirement are a child-care facility (as defined in the Human Resources Code, §42.002(3)), school health clinic, or Head Start program if the entity encourages parental involvement in and management of the health care of children receiving services. Parental involvement includes the exempt entity notifying the child's parent, guardian, or authorized adult before a THSteps medical or dental check-up or treatment visit, of the time and place of the child's appointment and encouraging the parent, guardian, or other authorized adult to attend. Notification must be done by the means of communication determined by the exempt entity to be the most effective. Such communication must be documented and may include, but is not limited to, one or more of the following options: a home visit from an outreach worker, written or printed correspondence, or telephone contact.

(b) THSteps providers must obtain legally effective, written informed consent prior to the provision of THSteps check-ups or treatment services.

(1) Consent by a person who may legally give consent is necessary for participation in THSteps medical or dental services. Consent requires the free exercise of choice without any force, fraud, deceit, constraint, or coercion by the person authorized to provide consent for the client.

(2) There are basic elements necessary to consent. Clients or their parents or guardians who can give informed consent have the right to understand their health care needs and the different ways their health care problems can be treated. At a minimum, they must be informed of:

(A) diagnosis;

- (B) scope of proposed treatment, including alternatives and risks;
- (C) anticipated results; and
- (D) need for administration of sedation or anesthesia, including risks.

§33.7. Exceptions to Timely Delivery of THSteps Services.

Timely delivery of THSteps services, including outreach, informing and check-up services, may not be made if:

- (1) the client or family could not be located despite a good faith effort to do so; or
- (2) the client or family chooses not to receive available or recommended services in a timely manner after being informed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705756
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 6, 2008
For further information, please call: (512) 458-7111 x6972



SUBCHAPTER B. CLIENT RIGHTS

25 TAC §33.20, §33.21

STATUTORY AUTHORITY

The proposed new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rules affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.20. Client Rights.

(a) Utilization of THSteps services is voluntary. Acceptance or refusal of THSteps services does not affect eligibility for or receipt of any other Medicaid service, or for future THSteps services.

(b) All THSteps records about clients are considered confidential information, in accordance with the standards and requirements described in §33.30 of this title (relating to Confidentiality of Records).

(c) Clients have a right to consent to or refuse treatment and actively participate in treatment decisions, including the right to refuse follow-up care or treatment recommended by the provider.

(d) THSteps clients are entitled to receive:

(1) medical and dental services when informed consent is given, including check-ups that are due as described in §33.41 of this title (relating to Periodicity of Medical and Dental Check-ups);

(2) services free from abuse or harm from the provider or the provider's staff; and

(3) only medically necessary treatment which meets professionally recognized standards of health care.

§33.21. Freedom of Choice.

(a) Clients who are not enrolled in a Medicaid managed care plan have the freedom to choose any participating THSteps medical provider for their medical check-ups.

(b) Clients who are enrolled in a Medicaid managed care plan need to check with their plan regarding the amount of freedom they have to choose a THSteps provider.

(c) Clients have the freedom to choose any participating THSteps dental provider for dental check-ups and treatment services, except clients in the conservatorship of the Department of Family and Protective Services who receive all dental services from a managed care plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel
Department of State Health Services
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SUBCHAPTER C. CONFIDENTIALITY

25 TAC §33.30

STATUTORY AUTHORITY

The proposed new rule is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rule affects the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rule implements Government Code, §2001.039.

§33.30. Confidentiality of Records.

(a) Federal and state laws and regulations prohibit the disclosure of information about Medicaid clients without effective consent by the client or on behalf of the client, except for purposes directly connected with the administration of the Medicaid program, as described in 42 USC, §1396a(a)(7); 42 CFR, §§431.301 - 431.306; Human Resources Code, §12.003 and §21.012; and Government Code, §552.101. Providers of THSteps services are not considered directly connected with the administration of the program. Although THSteps providers are not entitled to confidential information without prior consent, they are able to verify a client's eligibility status.

(b) Entities with which HHSC or the department contracts to perform certain administrative functions, including contractors for outreach, informing, and transportation services, may receive confidential

information without the client's consent, but only to the extent necessary to performance and administration of the contract. These contracted entities are bound by the same standards of confidentiality applicable to the Medicaid program, and they must provide effective safeguards to ensure confidentiality.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705760

Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER D. ELIGIBILITY AND PERIODICITY

25 TAC §33.40, §33.41

STATUTORY AUTHORITY

The proposed new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rules affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.40. Eligibility for Medical and Dental Services.

(a) Medical check-ups eligibility. Clients are eligible to receive THSteps medical check-ups and services from birth through the end of the month of their 21st birthday.

(b) Dental Services Eligibility. Clients are eligible to receive THSteps dental check-ups beginning at six months of age or at the first eruption of primary teeth, whichever occurs first, through the end of the month of their 21st birthday. Clients are eligible for any medically necessary dental services from their date of birth. As described in the TMPPM, eligibility for certain dental services may require prior authorization, and for some services, clients lose eligibility on their 21st birthday. A specific exception applies to orthodontic services, as described in §33.71(c) of this title (relating to Orthodontic Services and Prior Authorization).

§33.41. Periodicity of Medical and Dental Check-ups.

(a) Medical check-ups periodicity. Clients are eligible to receive a comprehensive medical check-up at the intervals set forth in the TMPPM and current THSteps outreach and informing materials distributed to eligible clients and their families. The periodicity of medical check-ups is at least as frequent as that recommended by the American Academy of Pediatrics. Clients are also eligible to receive a medical check-up, even if one is not due under the periodicity schedule, if:

(1) there are indications that a health screening is medically necessary; or

(2) required to meet a state or federal law requirement, such as a child entering Head Start or foster care, or in a pre-adoptive placement.

(b) Dental check-ups periodicity. Clients are eligible to receive dental check-ups at six-month intervals, based on the date of the client's last dental check-up. Clients less than three years of age may be eligible to receive dental check-ups at three-month intervals if identified during a dental visit as being at high risk for developing dental disease.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705762

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER E. MEDICAL CHECK-UPS

25 TAC §33.60

STATUTORY AUTHORITY

The proposed new rule is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rule affects the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.60. Medical Check-ups.

(a) Clients are entitled to receive a comprehensive medical check-up for the early detection of health problems and the referral for definitive diagnosis and treatment when indicated by the check-up.

(b) Following are the federally-mandated components of a THSteps comprehensive medical check-up:

(1) comprehensive health and developmental history, including physical and mental health and development;

(2) comprehensive unclothed physical examination;

(3) immunizations appropriate for age and health history;

(4) laboratory tests appropriate to age and risk, including lead toxicity screening; and

(5) health education, including anticipatory guidance.

(c) THSteps providers may be required to perform additional services or screening during a medical check-up, as described in the TMPPM.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705764

Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER F. DENTAL SERVICES

25 TAC §§33.70 - 33.72

STATUTORY AUTHORITY

The proposed new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rules affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.70. Dental Preventive and Treatment Services.

(a) In addition to dental check-ups, which may include radiographs and other diagnostic tests, clients are eligible to receive the following dental services and treatment, as described in detail in the TMPPM:

- (1) diagnostic;
- (2) preventive;
- (3) therapeutic (including orthodontic);
- (4) emergency; and
- (5) medically necessary treatment.

(b) Prior authorization may be required for certain services and documentation requirements must be met, as described in detail in the TMPPM. All dental services are subject to utilization review, as described in §33.72 of this title (relating to Dental Utilization Reviews).

§33.71. Orthodontic Services and Prior Authorization.

(a) Orthodontic services for cosmetic reasons only are not a covered Medicaid service. Orthodontic services must be prior authorized and are limited to treatment of severe handicapping malocclusion and other related conditions as described and measured by the procedures and standards published in the TMPPM.

(b) Prior authorization for orthodontic services is not transferable to another provider.

(c) Orthodontic services that are authorized and initiated before a client loses Medicaid eligibility or turns 21 years of age, can continue beyond the date the client loses eligibility if the services are completed within 36 months of initiation, as described in the TMPPM.

§33.72. Dental Utilization Reviews.

(a) Purpose. The purpose of dental utilization reviews is to ensure program fiscal integrity, to address the federal mandate requiring program funds be spent only as allowed under federal and state laws and regulations, and to ensure that services are appropriately provided to clients.

(b) Recoupment of overpayments. If the results of a utilization review indicate overpayment for services delivered or that payment was made for services not delivered, recoupment is required. The appropriate agency or agency designee shall notify the provider in writing of any overpayment identified and the method of recoupment to be used.

(c) Administrative actions and sanctions. Evaluation of a utilization review may result in one or more of the following administrative actions or sanctions by the appropriate agency or the agency's designee:

- (1) closure of the review with written notification to the provider;
- (2) discussion and interpretation of the utilization review results with the provider;
- (3) referral to the appropriate state licensing board or OIG;
and
- (4) any other remedies authorized by rule, regulation, statute, or contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§33.13 - 33.15

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.13. Purpose.

§33.14. Outreach, Informing, and Support Services.

§33.15. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER B. RECIPIENT RIGHTS

25 TAC §§33.61 - 33.63, 33.66

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.61. *Recipient Rights.*

§33.62. *Confidentiality of Records.*

§33.63. *Consent.*

§33.66. *Freedom of Choice.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER C. ELIGIBILITY

25 TAC §33.112

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which

authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeal affects the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.112. *Eligibility for Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

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SUBCHAPTER D. PERIODICITY

25 TAC §§33.122, 33.123, 33.125

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.122. *Periodicity.*

§33.123. *Periodic Check-up Due Date.*

§33.125. *Exceptions to Timely Delivery of THSteps Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

Department of State Health Services

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SUBCHAPTER E. MEDICAL SERVICES

25 TAC §§33.131 - 33.135, 33.140

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.131. *Medical Check-up Services.*

§33.132. *Medical Diagnosis and Treatment Services.*

§33.133. *Approved Medical Check-up Providers.*

§33.134. *Primary Responsibilities of Medical Check-up Providers.*

§33.135. *Claims--Time Limits, Return, and Denial.*

§33.140. *Referral for Investigation of Fraud or Program Abuse.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel

Department of State Health Services

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SUBCHAPTER G. DENTAL SERVICES

25 TAC §§33.301 - 33.311, 33.314, 33.315, 33.317 - 33.320

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.301. *Definitions.*

§33.302. *Oral Evaluations and Dental Services.*

§33.303. *Preventive Dental Services.*

§33.304. *Therapeutic Dental Services.*

§33.305. *Orthodontic Services Limitations.*

§33.306. *Eligibility for Orthodontic Services.*

§33.307. *Payment Limitations for Orthodontic Services.*

§33.308. *Emergency Dental Services*

§33.309. *Allowable Services and Limitations.*

§33.310. *Eligibility for THSteps Dental Services.*

§33.311. *Requirements for Provider Enrollment and Continuing Participation.*

§33.314. *Charges to Recipients.*

§33.315. *Payment of Claims.*

§33.317. *Change to Another Provider.*

§33.318. *Standards of Care.*

§33.319. *Management of Complaints.*

§33.320. *Performance of Dental Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez
General Counsel

Department of State Health Services

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SUBCHAPTER H. DENTAL UTILIZATION REVIEW

25 TAC §§33.331, 33.334, 33.351 - 33.358

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. The review of the rules implements Government Code, §2001.039.

§33.331. *Purpose.*

§33.334. *Post-payment Orthodontic Utilization Review.*

§33.351. *Types of TDH Utilization Reviews.*

§33.352. *Selection of Dentists for TDH Utilization Review.*

§33.353. *Notification to Provider of TDH On-Site Utilization Review.*

- §33.354. *Provider Cooperation.*
§33.355. *Disposition of TDH Utilization Review Results.*
§33.356. *Recoupment of Overpayments as a Result of TDH Utilization Review.*
§33.357. *Administrative Actions and/or Sanctions.*
§33.358. *Referral for Investigation of Fraud or Program Abuse.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



CHAPTER 417. TDMHMR AND FACILITY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§417.301 - 417.311 and 417.313 - 417.316 and new §§417.301 - 417.308, concerning the policies and standards for volunteer engagement and fundraising at state hospitals.

BACKGROUND AND PURPOSE

The repeal of §§417.301 - 417.311 and 417.313 - 417.316 describe the policies and standards for volunteer engagement, fundraising and solicitation, donations, naming of donations, Volunteer Services Councils (VSCs), Volunteer Services State Council (VSSC), and auditing and reporting guidelines. VSC is defined as a 501(c)(3) non-profit organization formed for generating resources on behalf of the state hospital. The repeal will eliminate obsolete rules of the former Texas Department of Mental Health and Mental Retardation that were transferred to the department in September 2004 in compliance with Acts 2003, 78th Legislature, Regular Sessions, Chapter 198 (House Bill 2292).

These rules will be replaced by new department volunteer and community engagement rules and three policies (1) Volunteer and Intern Engagement; (2) Fund-Raising and Solicitation (department wide); and (3) VSCs, which provides an up-to-date, reorganized, and clarified process.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 417.301 - 417.311 and 417.313 - 417.316 have been reviewed and the department has determined that reasons for adopting the sections do not continue to exist except for parts of §§417.307, 417.309, 417.311, and 417.313, which have been rewritten and are being proposed as new rules.

SECTION-BY-SECTION SUMMARY

The repeal of §§417.301 - 417.311 and 417.313 - 417.316 is necessary because the internal policies will now provide standards and processes for working with the volunteers and interns; fundraising for the benefit of department programs and clients as well as internal fundraising; and working with the VSCs, private donors, and private organizations.

The new §§417.301 - 417.308 update legacy agency names, agency locations, and definitions. The new §§417.305 - 417.308 describe the relationship of donors to the department and employees of the department; relationship of private organizations (VSCs) to the department; and all individuals and groups volunteering or partnering with the department that must abide by all applicable department rules, policies, and procedures.

FISCAL NOTE

Rosamaria Murillo, Director, Consumer Affairs Unit, has determined that for each year of the first five-year period that the repeal and new sections are in effect, there will be no fiscal implications to the state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Murillo has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because their business practices will not be altered in order to comply with the proposed repeal and new sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Murillo has also determined that for each year of the first five years the repeal and new sections are in effect, the public will benefit from the adoption of the repeal and new sections. The public benefit anticipated is to eliminate possible confusion caused by outdated policies and procedures located in the rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Charlaine Ferguson, Consumer Affairs Unit, Center for Consumer and External Affairs, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7404, extension 6605 or by email to charlaine.ferguson@dshs.state.tx.us. Comments

will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER G. COMMUNITY RELATIONS

25 TAC §§417.301 - 417.311, 417.313 - 417.316

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Government Code, Chapter 2109, which governs volunteer programs in a state agency; and Government Code, Chapter 2255, concerning the relationship of a state agency to a private donor or a private organization. The review of the rules implements Government Code, §2001.039.

The proposed repeals affect the Health and Safety Code, Chapter 1001, and Government Code, Chapters 531, 2109, and 2255.

§417.301. *Purpose.*

§417.302. *Application.*

§417.303. *Definitions.*

§417.304. *Volunteer Programs.*

§417.305. *Volunteer Program Procedures.*

§417.306. *TDMHMR Awards and Recognition of Volunteers and Visiting Groups.*

§417.307. *Volunteer Services Council (VSC).*

§417.308. *Fundraising and Solicitation.*

§417.309. *Donations.*

§417.310. *Naming of Donations.*

§417.311. *Volunteer Services State Council (VSSC).*

§417.313. *Auditing and Reporting Guidelines.*

§417.314. *Exhibits.*

§417.315. *References.*

§417.316. *Distribution.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. COMMUNITY ENGAGEMENT

25 TAC §§417.301 - 417.308

STATUTORY AUTHORITY

The proposed new sections are authorized under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Government Code, Chapter 2109, which governs volunteer programs in a state agency; and Government Code, Chapter 2255, concerning the relationship of a state agency to a private donor or a private organization. The review of the rules implements Government Code, §2001.039.

The proposed new sections affect the Health and Safety Code, Chapter 1001, and Government Code, Chapters 531, 2109, and 2255.

§417.301. *Purpose.*

The purpose of this subchapter is to delineate policy and establish uniform operating standards for donors and volunteer services councils at the Department of State Health Services.

§417.302. *Application.*

This subchapter applies to all donors, all state hospitals and the Center for Consumer and External Affairs of the Department of State Health Services.

§417.303. *Definitions.*

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) 501(c)(3) organization--An organization exempt from taxation under §501(c)(3) of the Internal Revenue Code.

(2) Client--A person receiving services at a state hospital or clinic.

(3) Community relations director--The employee responsible for coordinating a state hospital's community relations functions, volunteer programs, fund-raising, and donations.

(4) Consumer Affairs--The department unit responsible for providing support to staff in the processing of donations and engagement of volunteers and interns.

(5) Department--The Department of State Health Services.

(6) Donor--An individual, community group, or business entity who offers a gift to the department.

(7) Employee--An individual who is legally employed to perform work and who is paid a salary or wage by the department.

(8) Gift--A donation of money, property, or in-kind good or in-kind service. This term does not include funding under a federal grant, state grant, or private non-profit organization grant for which the department has made a formal written application and is subject to an agreement between the department and the donor relating to the use of the grant.

(9) Volunteer Services Council (VSC)--A 501(c)(3) organization that is formed to generate resources on behalf of a state hospital.

(10) Volunteer Services State Council (VSSC)--A 501(c)(3) statewide service organization that assists member volunteer groups to provide fund-raising support to state schools, state hospitals, and community mental health and mental retardation centers.

§417.304. Volunteers and Donors.

The department values volunteers and donors for their efforts to provide additional services and goods, personal attention, and relationships that enhance and enrich the lives of the department clients.

§417.305. Relationship of Donors to the Department and Employees of the Department.

(a) Before making a donation to the department, a donor must report to the department Consumer Affairs Unit any contracts or licenses the private donor has with the department.

(b) The department may not accept a gift from a donor that has an employee of the department as a director or officer, except as otherwise provided in this chapter.

(c) No employee of the department may solicit or accept a personal gift of money or any other item of value from a donor. A personal gift is a gift to the employee as an individual.

(d) No employee of the department may be employed by a donor without approval from the department.

(e) Except as otherwise provided in this chapter, a donor must not use an employee of the department or the department property except under a contract with the department regarding the use of the employee or property.

§417.306. Relationship of Private Organizations to the Department and Employees of the Department/Volunteer Services Councils (VSCs).

(a) A state hospital may have a 501(c)(3) organization (i.e., volunteer services council (VSC)) to generate resources on its behalf.

(b) A state hospital may work with its VSC to enhance fund-raising activities.

(c) The state hospital superintendent and community relations director are nonvoting members of the VSC board and executive committee.

(d) No state hospital employee of department may be a VSC board member or registered agent.

(e) No state hospital employee's spouse or minor child may be a VSC board member or registered agent.

(f) State hospital superintendent must approve all nominees for the VSC board.

(g) Community relations director must approve all state hospital and VSC fund-raising activities.

(h) Community relations director may make expenditures of up to \$300 on behalf of the VSC for the benefit of consumers.

(i) The community relations department may process and issue receipts for donations to the VSC.

(j) No employee may sign a VSC check or use a VSC debit or credit card.

(k) The community relations director may maintain a VSC petty cash fund of up to \$300 to be used for the benefit of consumers if guidelines regarding the fund's purpose and maximum dollar amount are included in the memorandum of understanding between the state hospital and the VSC.

(1) The community relations director must appoint a primary and alternate custodian for the VSC petty cash fund.

(2) The primary custodian of the petty cash fund:

(A) is responsible for maintaining receipts and accurate documentation of all funds disbursed and for furnishing this documentation to the treasurer of the VSC; and

(B) must sign a responsibility statement for the funds.

(3) An officer of the VSC, or an employee outside of the community relations department, must reconcile the petty cash fund at least once every two months.

(l) Department state hospitals may provide the following items of support for the VSC:

(1) office space;

(2) fund-raising assistance;

(3) annual training for board members and officers;

(4) clerical and administrative services; and

(5) assistance in the coordination of activities.

(m) Funds generated by a VSC minus legitimate expenses may only be used for:

(1) the needs of clients;

(2) the enhancement of existing state hospital operations;

(3) recognition and education projects; and

(4) new initiatives to improve the quality of life clients.

(n) Funds generated by the VSC may not be used for:

(1) recognition events, receptions, or gifts for a legislator;

(2) recognition events, receptions, or gifts for an employee, which is not part of an established award program;

(3) political contributions or lobbying efforts;

(4) alcoholic beverages, unless used at a fund-raising event;

(5) loans, including travel advances;

(6) operating programs, or contracting for programs on behalf of the department;

(7) cash awards or salary supplementation for employees; and

(8) other purposes determined by the department to be unethical, unlawful, or inappropriate.

(o) A VSC must not hold monies on behalf of employees for non-VSC-sponsored activities.

(p) All funds and goods donated to the VSC remain the property of the VSC until the department accepts them.

(q) The department has the right to review and approve all VSC donations of real property and any permanent improvements to existing real property that may be donated to the state hospital by the VSC.

(r) VSC must:

(1) coordinate its activities with state hospital administration. The state hospital superintendent has full authority over all functions and projects concerning the state hospital, including clients and employees;

(2) annually agree to and sign a memorandum of understanding (MOU) governing the relationship between the state hospital and the VSC;

(3) obtain an one-year audit at least once every three years and, if has annual gross receipts in excess of \$100,000, obtain an annual certified, independent audit; and

(4) provide bond for its officers and signatory agents.

(s) VSC members are prohibited from influencing the passage or defeat of legislation as a representative of the VSC, the state hospital, or the department.

§417.307. Volunteer Services State Council (VSSC).

(a) The department may work with the VSSC to enhance volunteer and fund-raising efforts.

(b) The following individuals may not be a voting VSSC board member or registered agent:

(1) a department employee; and

(2) a department employee's spouse or minor child.

(c) The Commissioner of the department designates the director of Consumer Affairs as a non-voting member of the VSSC board of trustees and executive committee.

(d) No employee may:

(1) have expenditure authority for the VSSC;

(2) process or issue receipts for donations to the VSSC;

(3) sign a VSSC check or use a VSSC debit or credit card.

(e) The may provide the following items of support for the VSSC:

(1) ongoing technical support, including resource development and design;

(2) media assistance, including media relations;

(3) employee assistance for coordination of activities;

(4) fund-raising assistance; and

(5) training for volunteers, board members, and officers.

(f) Funds generated by the VSSC may only be used for:

(1) the benefit of the individuals served by its member volunteer groups;

(2) the enhancement of existing operations;

(3) recognition and education projects;

(4) new initiatives that improve the quality of life for individuals served by its member volunteer groups; and

(5) other legitimate expenses.

(g) VSSC funds may not be used for:

(1) recognition events, receptions, or gifts for a legislator;

(2) recognition events, receptions, or gifts for any employee, that are not part of an established award program;

(3) political contributions or lobbying efforts;

(4) alcoholic beverages, unless used at a fund-raising event;

(5) loans, including travel advances;

(6) operating programs, or contracting for programs on behalf of the department;

(7) cash awards or salary supplementation for employees; and

(8) other purposes determined by the department to be unethical, unlawful, or inappropriate.

(h) The VSSC may not hold monies on behalf of the department employees for non-VSSC-sponsored activities.

(i) VSSC members are prohibited from influencing the passage or defeat of legislation as a representative of the VSSC, a state hospital, or the department.

§417.308. Department Policies.

(a) All individuals and groups volunteering or partnering with the department must abide by all applicable department rules, policies, and procedures.

(b) Department policies and forms can be obtained by calling the Consumer Affairs Unit at (512) 458-7404, or by writing the Department of State Health Services, Consumer Affairs, MC-1913, P.O. Box 149347, Austin, Texas 78714-9347.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lisa Hernandez

General Counsel

Department of State Health Services

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT SUBCHAPTER B. RETURN TO WORK

28 TAC §137.41, §137.49

The Texas Department of Insurance, Division of Workers' Compensation (Division) proposes an amendment to §137.41, relating to Purpose, and proposes new §137.49, relating to Optional Preauthorization Plan. This proposed amendment and new section concerns the optional preauthorization plan for eligible employers who participate in the return-to-work pilot program for small employers.

The Division proposes an amendment to §137.41 and proposes new §137.49 to implement House Bill (HB) 886, enacted by the 80th Legislature, Regular Session, effective May 17, 2007. HB 886 amends Labor Code §413.022. Labor Code §413.022, enacted by the 79th Legislature, Regular Session, created the return-to-work pilot program for small employers. This program establishes the workers' compensation return-to-work account

and permits eligible employers to obtain from this account, in accordance with Division rules, reimbursement of up to \$2,500 in expenses incurred by the employer in making workplace modifications and other changes designed to accommodate an injured employee's early and sustained return to work. HB 886 amends Labor Code §413.022 by creating the optional preauthorization plan for eligible employers who participate in this return-to-work pilot program. Under this plan, an eligible employer may, prior to making workplace modifications and other changes, submit to the Division a proposal that describes the workplace modifications and other changes that the employer proposes to make to accommodate an injured employee's return to work. If the Division approves the proposal, the Division will, up to the permitted amount, guarantee reimbursement of the expenses the employer will incur in implementing the modifications and changes.

The proposed amendment to §137.41 and proposed new §137.49 is necessary because HB 886 requires the optional preauthorization plan to be established by Commissioner of Workers' Compensation rule. The proposed amendment to §137.41 adds proposed new §137.49 to the purpose provision of Subchapter B and explains that §§137.41 - 137.49 sets forth the terms, conditions, and requirements for the return-to-work pilot program for small employers. Proposed new §137.49(a) specifies who is eligible to apply for a guaranteed reimbursement of expenses. This proposed rule states that an "eligible employer," which is defined by Labor Code §413.022(a)(2) and §137.42(2) of this title (relating to Definitions), may apply for a guaranteed reimbursement of expenses. This proposed rule also states that an eligible employer may apply for a guaranteed reimbursement of "eligible expenses." "Eligible expense" is defined by §137.42(3) of this title. Proposed new §137.49(b) specifies how an eligible employer applies for a guaranteed reimbursement of expenses. It requires the employer to submit to the Division a completed Preauthorization Proposal Plan that includes a description of the proposed modifications and changes, the estimated costs of those modifications and changes, and a copy of the Division's "Work Status Report" from the injured employee's examining doctor. Proposed new §137.49(c) provides that the Division may either deny an incomplete proposal plan or return an incomplete proposal plan to the employer for completion or supplementation. Proposed new §137.49(d) provides that the Division will make the Preauthorization Proposal Plan form available on the Division's website and at the Division's central office and will provide the form to an employer upon request. Proposed new §137.49(e) requires the return-to-work account administrator to review each submitted proposal plan in accordance with §137.48 of this title (relating to Return-to-Work Account Administrator Determinations) and to promptly notify the employer in writing of the approval or denial of the employer's proposal plan. Proposed new §137.49(f) specifies the process the employer must follow to obtain reimbursement. It requires the employer to complete the approved modifications and changes and to submit to the Division an Application for Reimbursement under §137.46 of this title (relating to Application for Reimbursement from the Return-to-Work Account) that contains the information under §137.47 of this title (relating to Criteria for Evaluation of Applications). Upon receipt of this information and subject to §137.44 of this title (relating to Return-to-Work Account for Small Employers), proposed new §137.49(g) requires the Division to reimburse the employer the costs the employer incurred in making the approved modifications and changes. This proposed new section permits the Division to deny reimbursement if the modifications and changes differ materially from the proposal.

Patricia Gilbert, Executive Deputy Commissioner for Operations, has determined that, for each year of the first five years the proposed amendment and new section are in effect, there will be minimal fiscal impact on state or local government as a result of enforcing or administering this proposed amendment and new section. Ms. Gilbert has also determined that there will be no measurable effect on local employment or the local economy as a result of enforcing or administering this proposed amendment and new section.

Ms. Gilbert has determined that for each year of the first five years the proposed amendment and new section are in effect, the anticipated public benefit will be increased employer participation in the return-to-work pilot program for small employers. Eligible employers will be more willing to invest in workplace modifications and other changes that accommodate an injured employee's early and sustained return to work when they are assured reimbursement of the associated costs. Increased employer participation will lead to more injured employees returning to work in an early and sustained manner which, in turn, will lead to reduced costs for all participants in the workers' compensation system. There are no persons who are required to comply with the proposed amendment and new section. The costs on those who choose to participate will be the costs of completing and submitting the required forms and the costs incurred in making the approved workplace modifications and changes, costs which will, if guaranteed, be reimbursed in an amount of up to \$2,500. This optional preauthorization plan is designed to benefit small businesses and participation is voluntary. Therefore, this proposed amendment and new section will not have an adverse economic effect on small businesses or micro-businesses and it is neither legal nor feasible to waive the requirements of the proposed amendment and new section for small or micro-businesses.

The Division has determined that no private real property interests are affected by this proposed amendment and new section and that this proposed amendment and new section does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

To be considered, written comments on the proposed amendment and new section must be submitted no later than 5:00 p.m. on December 31, 2007. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html> or by mailing your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

Any request for a public hearing must be submitted separately to the Office of General Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. on December 31, 2007. If a hearing is held, written and oral comments presented at the hearing will be considered.

This proposed amendment and new section are proposed under Labor Code §§413.022, 402.00111, and 402.061. Labor Code §413.022 requires the Commissioner of Workers' Compensation by rule to establish an optional preauthorization plan for eligible employers who participate in the return-to-work pilot program. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Ti-

title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

The following section is affected by this proposal: Labor Code §413.022.

§137.41. Purpose.

The purpose of §§137.41 - 137.49 of this chapter (relating to Disability Management) [137.48] is to set forth the terms, conditions, and requirements for the return-to-work pilot program for small employers.

§137.49. Optional Preauthorization Plan.

(a) An eligible employer who participates in the return-to-work pilot program for small employers may apply to the Division for a guaranteed reimbursement of eligible expenses from the return-to-work account prior to making workplace modifications or other changes designed to accommodate an injured employee's return to work.

(b) To apply for a guaranteed reimbursement of eligible expenses, an eligible employer must submit to the Division a properly completed Preauthorization Proposal Plan (DWC Form - 008). An eligible employer must provide all information required by this form including:

(1) a description of the workplace modifications and other changes that the employer proposes to make to accommodate the injured employee's return to work;

(2) the estimated costs in making those proposed modifications and changes; and

(3) a copy of the Division's "Work Status Report" from the injured employee's examining doctor that specifies the injured employee's physical restrictions or limitations which necessitates the provision of a workplace modification in order for the employee to return to work in a modified or alternative duty capacity.

(c) An incomplete proposal plan may be denied or returned to the employer for additional information.

(d) The Preauthorization Proposal Plan form (DWC Form - 008) shall be available on the Division's website (<http://www.tdi.state.tx.us/wc/index.html>) and at the Division's central office. Upon request, the Division shall provide a Preauthorization Proposal Plan form to an employer.

(e) The administrator shall review each submitted proposal plan in accordance with §137.48 of this title (relating to Return-to-Work Account Administrator Determinations). After review, the administrator may approve or deny the proposal plan in whole or in part or request additional information. The administrator shall promptly notify the employer in writing of the approval or denial of the proposal plan.

(f) Upon receipt of Division approval of the proposal plan, the employer may begin all approved modifications and changes set out in the approved proposal plan. Upon completion of the approved modifications and changes, the employer may obtain reimbursement from the return-to-work account by submitting to the Division a properly completed Application for Reimbursement under §137.46 of this title (relating to Application for Reimbursement from the Return-to-Work Account) that contains the information under §137.47 of this title (relating to Criteria for Evaluation of Applications).

(g) Upon receipt of the information described in subsection (f) of this section and subject to §137.44 of this title (relating to Re-

turn-to-Work Account for Small Employers), the Division shall reimburse the employer the costs incurred by the employer in making the approved modifications and changes unless the Division determines that the modifications and changes differ materially from the employer's proposal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 26, 2007.

TRD-200705837

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 804-4715

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

**PART 3. TEACHER RETIREMENT
SYSTEM OF TEXAS**

**CHAPTER 41. HEALTH CARE AND
INSURANCE PROGRAMS**

**SUBCHAPTER C. TEXAS SCHOOL
EMPLOYEES GROUP HEALTH (TRS-
ACTIVECARE)**

34 TAC §41.50, §41.51

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) proposes amendments to §41.50 concerning administrative appeals relating to claims and §41.51 concerning administrative appeals relating to eligibility. Those two rules respectively address the process that participants in the active public education employees health benefit program (TRS-ActiveCare) can use to appeal a denial of a claim or a denial of a request to enroll in TRS-ActiveCare. Before the merits of an appeal are reviewed by the TRS Appeal Committee (the "Committee"), a determination is made as to whether or not the appeal has been timely filed. If the Committee determines that the appeal was not timely made, this finding becomes the final decision of TRS.

The most important proposed change to each rule occurs, respectively, with (1) the deletion of existing §41.50(f), replaced with proposed to §41.50(o), and (2) the deletion of existing §41.51(e), replaced with proposed §41.51(i). These changes state that the Committee shall review appeals made at any stage of the appeal process for timeliness, not just the initial appeal that exists within the appeal process under each rule. All of the other proposed changes that appear throughout §41.50 and §41.51 are for clarification purposes only.

Section 41.50 concerns appeals relating to claims and other benefits under TRS-ActiveCare that are made to the Committee and possibly thereafter to the Executive Director. The most significant proposed change to the section would be to delete current subsection (f) and replace it with proposed new subsection

(o). That proposed change would provide that the Committee shall review appeals made at any stage of the appeal process for timeliness and not just the appeal initially made within the appeal process. The remaining changes proposed for §41.50 are for clarification and renumbering purposes only.

Section 41.51 concerns appeals relating to eligibility under TRS-ActiveCare. The rule addresses appeals relating to eligibility that are made to the Committee and possibly thereafter to the Executive Director. The most significant proposed change to §41.51 would be to delete current subsection (e) and replace it with proposed new subsection (i). As with the proposed amendments to §41.50, that proposed change to §41.51 would provide that the Committee shall review appeals made at any stage of the appeal process for timeliness and not just the appeal initially made within the appeal process. The remaining changes proposed for §41.51 are for clarification and renumbering purposes only.

Pattie Featherston, TRS Chief Operating Officer, estimates that, for each year of the first five years that proposed amendments to §41.50 and §41.51 will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the amended rules.

For each year of the first five years that the proposals will be in effect, Ms. Featherston and Ronnie Jung, TRS Executive Director, have determined that the public benefit will be to clarify that, as to each step in the appeal process, the Committee can make a determination as to whether an appeal was timely filed. When dealing with an appeal concerning a claim, the Committee may deny the appeal for lack of timeliness. When dealing with an appeal concerning eligibility that is not timely filed, the Committee may grant the appeal if extraordinary circumstances constituting "good cause" prevented the individual from complying fully with the applicable appeal deadline. Ms. Featherston has also determined that there will be no direct economic costs to persons required to comply with the proposed rules. There will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rules, and therefore no statement about the effect of the proposals on small businesses is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: The amendments are adopted under the following sections of the Insurance Code: §1579.052, which authorizes TRS to adopt rules relating to the TRS-ActiveCare program as TRS considers necessary, including rules relating to the adjudication of claims and expelling participants from the program for cause; and §1579.101, which requires TRS to establish by rule plans for group coverages under the TRS-ActiveCare program and to define by rule the requirements of each coverage plan and tier of coverage.

Cross-reference to statute: The adopted amendments affect the following sections of the Insurance Code: §1579.202, which describes "eligible employees" for TRS-ActiveCare; §1579.101, which authorizes plans of group coverages; §1579.104, which addresses optional coverages that can be offered under

TRS-ActiveCare; §1579.203, which addresses the ability of an eligible employee to select different coverage plans; and §1579.255, which addresses payments to TRS-ActiveCare by participating entities.

§41.50. Appeals Relating to Claims.

(a) A person enrolled in TRS-ActiveCare, other than a person enrolled in a health maintenance organization (HMO) participating in TRS-ActiveCare, who is denied payment of a claim or other benefit ("Claimant") may appeal the denial through a written request according to procedures established by the administering firm. All such procedures must be exhausted before the administering firm will issue a final decision. All relevant medical information should be submitted to the administering firm prior to the issuance of a final decision. Persons enrolled in a TRS-ActiveCare HMO shall follow the appeal procedures set out by the HMO.

(b) A Claimant [elaimant] may appeal the final denial of a claim or other benefit by the administering firm to the Teacher Retirement System of Texas (TRS), acting in its capacity as trustee of TRS-ActiveCare.

(c) An appeal made pursuant to subsection (b) of this section must be submitted by the Claimant [elaimant] in writing and received by TRS no later than 60 days after the date of the letter from the administering firm finally denying the claim. The appeal shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(d) An appeal made pursuant to subsection (b) of this section shall state the nature of the claim and shall include copies of all relevant documents that were considered by the administering firm, including copies of the correspondence to and from the administering firm.

(e) The TRS Appeal Committee ("Committee") is responsible for review and determination of appeals made pursuant to subsection (b) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Operating Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Operating Officer.

~~[(f) The Committee shall review an appeal made pursuant to subsection (b) of this section for timeliness and may deny an appeal that is not timely filed. Denial of an appeal for failure to file in a timely manner is a final decision by TRS.]~~

~~[(g)]~~ The Committee shall apply the TRS-ActiveCare plan design and rules in effect on the date the first of the following events occurs:

- (1) the date the claim was incurred; or
- (2) the date the benefit was denied by the administering firm.

~~[(g)]~~ ~~[(h)]~~ If the Committee determines that the claim should be paid or a benefit allowed, it shall so inform the administering firm and the Claimant [elaimant].

~~[(h)]~~ ~~[(i)]~~ If the Committee determines that the information submitted with the appeal supports the denial by the administering firm, the Committee shall provide a written decision, which shall include an explanation of the reasons for the decision, to the Claimant [elaimant] and to the administering firm. The written decision shall include information on how the Claimant [elaimant] may request an appeal conference or an appeal to the Executive Director.

~~[(i)]~~ ~~[(j)]~~ The initial written decision of the Committee may be appealed by the Claimant to the Committee for an appeal conference. A request for an appeal conference must be submitted by the Claimant

[claimant] in writing and must be received by TRS no later than 45 days after the date of the initial written decision by the Committee. The request for an appeal conference shall be directed to the attention of the TRS-ActiveCare Grievance Administrator.

(j) ~~[(k)]~~ Upon receipt of a timely request for an appeal conference, the TRS-ActiveCare Grievance Administrator shall schedule an appeal conference with the Committee. The Grievance Administrator shall notify the Claimant [claimant] and the administering firm of the time, date, and manner of the conference, as well as the procedures applicable to the conference.

(k) ~~[(l)]~~ At any time prior to the appeal conference, the Committee may decide to grant the appeal and will notify the Claimant [claimant] of this determination without the necessity of an appeal conference. The Committee cannot deny a claim after an appeal conference has been requested without holding the conference, but the initial denial by the Committee shall stand until the conference is held.

(l) ~~[(m)]~~ At the conference, the Committee shall consider the medical information previously submitted to the administering firm in support of the payment of the claim or benefit, as well as the administering firm's determination regarding medical issues. The Committee may request additional review by the administering firm on medical issues before the Committee issues a decision.

(m) ~~[(n)]~~ The Committee shall decide the appeal and shall notify the Claimant [claimant] and the administering firm of the decision in writing. The decision will include an explanation of the basis for the decision.

(n) ~~[(o)]~~ The initial written decision of the Committee or the written decision by the Committee made pursuant to an appeal conference may be appealed by the Claimant [claimant] to the TRS Executive Director. A request for an appeal to the Executive Director must be submitted by the Claimant [claimant] in writing and must be received by TRS no later than 45 days after the date of the initial written decision by the Committee or no later than 30 days after the date of the written decision by the Committee made pursuant to an appeal conference. The request for an appeal to the Executive Director shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. The appeal shall specifically describe why the Claimant [claimant] alleges that the Committee's decision is erroneous. The Executive Director shall make a decision based on the written appeal and based on the written decision of the Committee, as well as any written documents reviewed by the Committee. Subject to subsection (o) of this section and pursuant [Pursuant] to the delegation of authority through this section, the decision of the Executive Director is the final decision of TRS.

(o) The Committee shall review an appeal made pursuant to subsection (b), (i), or (n) of this section for timeliness and may deny an appeal that is not timely received by TRS. An appeal made pursuant to subsection (b), (i), or (n) of this section that is denied because TRS did not timely receive the appeal is a final decision by TRS.

§41.51. Appeals Relating to Eligibility.

(a) A full-time or part-time employee ("Petitioner") whose application to enroll themselves and/or their dependents in TRS-ActiveCare is denied by either TRS, the administering firm, or a participating entity may appeal the denial to TRS.

(b) An appeal made pursuant to subsection (a) of this section shall be made in writing and must be received by TRS no later than 45 days after the date of denial. The appeal shall be directed to the TRS-ActiveCare Grievance Administrator. TRS may, at its sole discretion, provide a copy of the appeal to the administering firm or the participating entity that denied enrollment.

(c) An appeal made pursuant to subsection (a) of this section shall state the basis for appeal and shall include all relevant documents and correspondence that were considered by TRS, the administering firm, or a participating entity when the enrollment was denied. The administering firm or participating entity is required, upon request by TRS, to participate in the process.

(d) The TRS Appeal Committee ("Committee") is responsible for the review and determination of appeals made pursuant to subsection (a) of this section. The Committee shall be appointed by the TRS Deputy Director or, if the position of the Deputy Director is vacant, the TRS Chief Operating Officer and shall serve at the discretion of the Deputy Director or, if the position of the Deputy Director is vacant, the Chief Operating Officer.

~~[(e) The Committee shall review an appeal made pursuant to subsection (a) of this section for timeliness and may deny an appeal that is not timely received by TRS. Denial of an appeal for failure to file in a timely manner is a final decision by TRS.]~~

(e) ~~[(f)]~~ In determining eligibility for enrollment, the Committee shall apply the TRS-ActiveCare plan design and rules in effect for the plan year in which the Petitioner is seeking enrollment. If TRS finds that extraordinary circumstances constituting "good cause" prevented the Petitioner from complying fully with a deadline established by TRS under the TRS-ActiveCare plan design or rules, the appeal may be granted. For purposes of this subsection, "good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause. If a person was reasonably prevented from complying with a deadline as a result of an unexpected natural disaster or sudden catastrophic event, that event may constitute "good cause" even though the event occurs on or near a deadline and arguably Petitioner could have met the deadline if Petitioner had acted sooner. Misinformation concerning a deadline provided to Petitioner by either TRS, the health plan administrator of TRS-ActiveCare, or a participating entity, and relied upon by Petitioner, may be grounds for "good cause" if the act of providing misinformation to Petitioner is documented or substantiated and a reasonable person would have relied on the information provided to Petitioner and reasonably would not have known the information provided to Petitioner was inaccurate.

(f) ~~[(g)]~~ The Committee shall notify the Petitioner, the administering firm, and the participating entity of its decision in writing.

(g) ~~[(h)]~~ If the Committee determines that the enrollment should be allowed, it shall inform the Petitioner, the administering firm, and the participating entity of the manner and effective date of enrollment by the Petitioner.

(h) ~~[(i)]~~ The Petitioner may appeal the written [a] decision of the TRS Appeal Committee relating to eligibility to the TRS Executive Director. A request for an appeal to the Executive Director must be submitted by the Petitioner in writing and must be received by TRS no later than 30 days after the date of the initial written decision by the TRS Appeal Committee. The request for an appeal to the Executive Director shall be directed to the attention of the TRS-ActiveCare Grievance Administrator. Subject to subsection (i) of this section and pursuant [Pursuant] to the delegation of authority through this section, the decision of the Executive Director is the final decision of TRS.

(i) The Committee shall review an appeal made pursuant to subsection (a) or (h) of this section for timeliness and may deny an appeal that is not timely received by TRS. An appeal made pursuant to subsection (a) or (h) of this section that is denied because TRS did not timely receive the appeal is a final decision by TRS.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705744

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 542-6438



SUBCHAPTER D. COMPARABILITY OF GROUP HEALTH COVERAGES

34 TAC §41.91

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) proposes amendments to §41.91 relating to certification of insurance coverage.

House Bill 2427, 80th Legislature, Regular Session (2007) ("H.B. 2427"), amended the provisions of §22.004 of the Education Code to eliminate the requirement that the executive director of TRS certify whether, for each district that does not participate in TRS-ActiveCare, the district's coverage is comparable to the basic health coverage provided under Chapter 1551, Insurance Code. Pursuant to H.B. 2427, the responsibility for each such determination now falls upon the school districts that do not participate in TRS-ActiveCare. Accordingly, §41.91 is proposed for amendment to conform it to the provisions of H.B. 2427 regarding certification of insurance coverage. To that end, the proposed amended section would define the term "school district" in proposed new subsection (a) to clarify that three of the four general types of entities that could be "participating entities" in TRS-ActiveCare would potentially be subject to this proposed rule, as amended. The fourth general type of entity that could be a "participating entity" in TRS-ActiveCare, a regional education service center, was not included in the proposed definition because all of those centers were required to participate in TRS-ActiveCare.

In renumbered §41.91(c), each school district, not the executive director of TRS, would be required to determine the comparability of the group health coverage that each district offers to its employees. For that same reason, it is proposed that existing §41.91(f) be deleted. Because each school district, not the TRS executive director, would be required to determine the comparability of coverage offered by the school district to its employees under these proposed amendments, the following additional changes are proposed: (i) the opening language of existing subsection (d) would be changed to clarify that each school district, not TRS staff under the direction of the executive director, must develop a methodology and criteria for determining the comparability of coverage; and (ii) large portions of existing subsection (d) would be eliminated.

The proposed amendments in renumbered subsection (e), new subsection (f), and renumbered subsection (g) would mirror the existing and new requirements of §22.004 (d), Education Code, as amended by H.B. 2427. Those subsections address various former requirements of TRS that H.B. 2427, and the proposed amendments to §41.91 implementing that legislation, now place

upon the school districts. The remaining changes to §41.91 are proposed for purposes of clarifying the rule.

Pattie Featherston, TRS Chief Operating Officer, estimates that, for each year of the first five years that proposed amendments to §41.91 will be in effect, there will be no foreseeable implications relating to cost or revenues of the as a result of enforcing or administering the amended rule. Rather, any cost or savings to state or local governments is the result of the legislative enactment not the related rule proposal. The legislative fiscal note for H.B. 2427 estimates that there will be a net savings to the state of about \$200,000 in each biennium as a result of eliminating the statutory requirement that TRS conduct the comparability study, and it anticipates no fiscal implication to local governments as a result of the legislation.

For each year of the first five years that the proposal will be in effect, Ms. Featherston and Ronnie Jung, TRS Executive Director, have determined that the public benefit will be to conform TRS's rule on the certification of insurance coverage to related provisions in H.B. 2427 and to provide guidance to school districts in implementing the legislation. Ms. Featherston has also determined that there will be no economic costs to persons or entities required to comply with the proposed rule. Rather, any economic costs to affected persons or entities, including school districts, would be the result of the legislative enactment. Further, any costs associated with an individual school district's assuming the responsibility of conducting a comparability study and reporting its results to TRS cannot reasonably be estimated at this time. There will be no effect on a local economy because of the proposals, and therefore no local employment impact statement is required under §2001.022 of the Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rules, and therefore no statement about the effect of the proposals on small businesses is required under §2006.002 of the Government Code.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice.

Statutory Authority: The amendments to §41.91 are proposed under the authority of §22.004, Education Code, which requires TRS to adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage offered under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code).

Cross-reference to statute: No other laws are affected by this proposal.

§41.91. Certification of Insurance Coverage.

(a) When used in this section, the term "school district" includes a school district, another educational district whose employees are members of the Teacher Retirement System of Texas (TRS), and an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code that meets the requirements of Section 1579.154, Insurance Code.

(b) [(a)] This section applies only to school districts that do not participate in the health benefits program offered under Chapter 1579, Insurance Code.

(c) [(b)] Each school district [The Executive Director of the Teacher Retirement System of Texas (TRS)] shall determine the comparability of the [a school district's] group health coverage it offers

to its employees to the coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code). As required by the Education Code, §22.004, each district shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842, Insurance Code, or a health maintenance organization under Chapter 843, Insurance Code. The coverage must meet the substantive coverage requirements of Chapter 1251, Subchapter A, Chapter 1364, and Subchapter A, Chapter 1366, Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental diagnostic procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code). In addition to these requirements, the following factors shall be considered by each school district in determining comparability:

- (1) the deductible amount for service provided inside and outside of the network;
- (2) the coinsurance percentages for service provided inside and outside of the network;
- (3) the maximum amount of coinsurance payments a covered person is required to pay;
- (4) the amount of the co-payment for an office visit;
- (5) the schedule of benefits and the scope of coverage;
- (6) the lifetime maximum benefit amount; and
- (7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

[(e) For the purposes of this decision, "comparable" means "similar, but not identical."]

(d) Each school district shall be responsible for developing [TRS staff, under the direction of the Executive Director, will develop] a methodology and criteria for comparison determination. This methodology will include an evaluation of relevant variables with respect to applicable factors stated in subsection (c) [(b)] of this section. [including the following related to the scope of coverage:]

- [(1) types of plans available in each area;]
- [(2) access to providers, including specialists; and]
- [(3) provider network availability and utilization.]

[(A) To provide for the reasonable and accurate consideration of these variables, a determination of each plan's benefit replacement ratio to the basic Texas Employees Group Benefits coverage will be used. Benefit replacement ratio means the ratio of benefits projected to be paid by the plan to the projected incurred cost of the services provided. Benefit replacement ratio determinations will involve review of applicable factors set forth in the Education Code, §22.004(a) in connection with plan information provided by the district. A plan will be certified as comparable if it has a benefit replacement ratio not more than five percentage points below the ratio of the applicable benchmark plan under Chapter 1551, Insurance Code.]

[(B) The benchmark plan will reflect the basic health coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code) ("Act"). Specifically the benchmark plan is the plan under the Act (or two plans if, in accordance with the Act, there is a distinction between point of service and out-of-network indemnity plans) most prevalent by number of employees participating. If the most prevalent plan(s) under the Act are amended, the benchmark plan(s) will be amended accordingly.]

[(C) Where a district offers multiple plans, some of which are determined by this methodology to be comparable, while others are not, the plans will be frequency weighted by the number of members therein, such that a weighted average will be determined. Accordingly, the school district composite comparability will be reported, as described by subsection (f) of this section, in addition to the comparability of each individual plan.]

[(D) TRS staff and the Executive Director may consult with qualified experts (including a group insurance consultant or actuary as described in §1575.052(b)(2), Insurance Code, to evaluate comparability, develop and use methodology, and determine benefit replacement ratios.)]

[(E) For reference purposes, the employee cost for each plan will also be reported, as described by subsection (f) of this section. However, employee cost will not be a factor in determining comparability.]

(e) Each school district shall prepare a report by March 1 of each even-numbered school year, based on the district group health coverage plan in effect during that current plan year, that includes:

(1) appropriate documentation of:

(A) the school district's contract for group health coverage with a provider licensed to do business in Texas by the Texas Department of Insurance or a risk pool authorized under Chapter 172, Local Government Code; or

(B) a resolution of the board of trustees of the school district authorizing a self-insurance plan for school district employees and of the school district's review of its ability to cover the liability assumed;

(2) the schedule of benefits;

(3) the premium rate sheet, including the amount paid by the school district and employee;

(4) the number of employees covered by the health coverage plan offered by the school district;

(5) information concerning the ease of completing the report required in subsection (g) of this section; and

(6) the compliance statement required in subsection (g) of this section.

(f) By March 1 of each even-numbered school year, each school district shall make the report required under subsection (e) of this section available for review, together with the policy or contract for the group health coverage plan, at the central administrative office of each campus associated with or in the school district. By such date, each school district shall also post this report on the school district's Internet website, if the school district maintains a website; and, in lieu of delivering a copy of this report to TRS, the school district shall provide a copy of the report upon written request from TRS.

(g) [(e)] Each school district shall report, using a uniform reporting form or method of reporting prescribed by TRS, the district's compliance with [the] Education Code, §22.004 [§22.004(e)],

to the Executive Director of TRS by March 1 of each even-numbered school year. This compliance statement must state whether or not the school district has complied with the requirements of Education Code, §22.004, specifically as to whether or not the school district: [The report must reflect the district group health coverage plan in effect during the current plan year and must include all information required by statute and any additional information requested by TRS staff to complete the certification. A district's failure to submit required information to TRS on or before March 1 of each even-numbered year may result in a TRS report to the Legislative Budget Board and the legislature reflecting the district's non-compliance, as described in subsection (f) of this section.]

(1) provides health coverage to its employees that is comparable to the basic health coverage provided under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code); and

(2) has complied with the other requirements of this section. A school district's failure to make the completed report required in subsection (e) of this section available as required in subsection (f) of this section or to submit to TRS the required compliance statement, on or before March 1 of each even numbered year, may result in the TRS report to the legislature reflecting the school district's non-compliance with one or more of the requirements of this section.

[(f) The Executive Director of TRS shall certify whether a district's coverage is comparable to the basic health coverage provided

under the Texas Employees Group Benefits Act (Chapter 1551, Insurance Code). If the Executive Director determines that the group health coverage offered by a district is not comparable, the Executive Director shall report that information to the district and to the Legislative Budget Board. The Executive Director shall submit a report to the legislature not later than September 1 of each even-numbered year describing the status of each district's group health coverage program based on the information provided by the district and the certification described herein.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705745

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: January 6, 2008

For further information, please call: (512) 542-6438

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.1

The State Securities Board withdraws the proposed repeal of §133.1 which appeared in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4166).

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705747

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: November 20, 2007

For further information, please call: (512) 305-8303

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7 TAC §133.1

The State Securities Board withdraws the proposed new §133.1 which appeared in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4167).

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705748

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: November 20, 2007

For further information, please call: (512) 305-8303

7 TAC §133.7

The State Securities Board withdraws the proposed repeal of §133.7 which appeared in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4167).

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705749

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: November 20, 2007

For further information, please call: (512) 305-8303

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7 TAC §133.7

The State Securities Board withdraws the proposed new §133.7 which appeared in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4168).

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705750

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Effective date: November 20, 2007

For further information, please call: (512) 305-8303

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.101, 81.103, 81.107, 81.108, 81.111 - 81.113, 81.115 - 81.117, 81.119 - 81.121, 81.123, 81.126 - 81.132, 81.134, 81.135

The Office of the Secretary of State adopts amendments to §§81.101, 81.103, 81.107, 81.108, 81.111 - 81.113, 81.115 - 81.117, 81.119 - 81.121, 81.123, 81.126 - 81.132, 81.134, and 81.135, concerning primary election funding. Sections 81.101, 81.111, 81.116, 81.121, 81.123, 81.126, 81.131 and 81.134 are adopted with changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7163). Sections 81.103, 81.107, 81.108, 81.112, 81.113, 81.115, 81.117, 81.119, 81.120, 81.127 - 81.130, 81.132 and 81.135 are adopted without changes and will not be republished.

The amended sections concern the financing of the 2008 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

Comments on the proposed rules for Election Code Chapter 19 Funds, 1 TAC Chapter 81, Subchapter F, were submitted by county chairs and county election officials during the County Chair Election Law Seminar hosted by the Office of the Secretary of State on October 12 - 13, 2007. Additional comments were received from county chairs and county election officials via e-mail. In response to these comments, changes were made to §§81.101, 81.111, 81.121, 81.123, 81.126, 81.131 and 81.134.

Most comments urged changes to clarify the language surrounding the process for the pre-populated sworn agreement, and to clean up language and dates regarding the primary. This office generally agreed with these comments and has clarified the terminology relating to the source for the pre-populated sworn agreement, ballot retention, and has corrected specific words and changed certain dates to properly reference the 2008 primary.

One county official commented that the costs of training should be reimbursed. This office does not agree that all costs of training should be reimbursed, but agrees that technical services acquired by the county to conduct training should be reimbursed. Accordingly, §81.121 has been revised to include allowable charges to the county for technical support or contracting expenses.

Lastly, it has been brought to our attention that the Texas legislature has imposed a new restriction concerning reimbursement of primary expenses. The General Appropriations Act of 2007 provides that state funds may not be used to reimburse counties for amounts that exceed the costs to conduct a joint primary election. Section 81.101(e) is added to address this new fiscal restriction.

The amendments are adopted under the Election Code, §31.003 and §173.006, which provide the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Election Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

Statutory Authority: Election Code, §31.003 and §173.006.

Cross reference to statute: No other sections are affected by the amendments.

§81.101. Application of Rules.

(a) This subchapter applies to the use and management of all primary funds.

(b) Approval by the Secretary of State of a Primary Finance Cost Estimate does not relieve the chair, or any employee of the primary fund, of their responsibility to comply with administrative rules issued by the Secretary of State, or with any statute governing the use of primary funds.

(c) The Secretary of State shall send a 2008 Primary Election Cost Estimate (PCE) and a Pre-Populated 2008 Primary Sworn Advancement Agreement (PSAA) to each county chair, the PSAA form will show the pre-populated amount of 75 percent of each county's 2006 Primary Election Final cost reported on line B17 of the Final Cost Report less any filing fees received as reported on the 2004 Primary Final Cost Report. In order to receive funding for the 2008 Primary, the chair must submit to the Office of the Secretary of State a notarized copy of the Sworn Advancement Agreement PEC form accepting the amounts indicated on the form. If a county did not hold a Primary, the county chair will submit for processing a 2008 Primary Election Cost Estimate Report. The chair must complete this form and submit it to our office for review and approval prior to receiving their 75 percent of estimated cost.

(d) If a statewide Runoff is conducted, the Secretary of State shall send a 2008 Primary Runoff Pre-Populated Sworn Advancement Agreement (PRSA) and a 2008 Primary Runoff Cost Estimate Report (PRCE) to each county chair, the PRSA form will show the pre-populated amount of 75 percent of each county's 2006 Primary Runoff Elec-

tion Final cost reported on line B18 of the Final Cost Report less any filing fees received as reported on the 2004 Primary Final Cost Report. In order to receive funding for the 2008 Runoff, the chair must submit to the Office of the Secretary of State a notarized copy of the Sworn Advancement Agreement (PRSAA) form accepting the amounts indicated on the form. If a county did not hold a Runoff, the county chair will submit for processing a 2008 Primary Runoff Election Cost Estimate Report. The chair must complete this form and submit it to our office for review and approval prior to receiving their 75 percent of estimated cost.

(e) Pursuant to the General Appropriations Act, 80th Legislature, 2007, counties may not be reimbursed for amounts that exceed the costs to conduct a joint primary election. Accordingly, any additional costs incurred due to the fact that county parties do not use joint polling places or do not use joint voting system equipment will not be reimbursed.

§81.111. Interest on Start Up Loan to Open Primary Fund is not Reimbursable.

A party chair may acquire a start up loan to defray the cost of the Primary, prior to receiving reimbursement from the state. A party chair may not use primary funds, which are subsequently approved by the Secretary of State, to pay interest on loans used to defray operating expenses incurred prior to the receipt of such funds.

§81.116. Estimating Voter Turnout.

(a) The county chair shall use the formula set out in the following figure, with necessary modifications as determined by the chair, to determine the estimated voter turnout for the 2008 primary elections. If a county chair receives allocated funds based on the PRECR forms, it is not required or necessary to submit an estimation of voter turnout. This general formula is a guideline and must be adjusted if the local political situation indicates a higher voter turnout than that derived by the formula.

Figure: 1 TAC §81.116(a)

(b) After estimating the voter turnout for each precinct, the county chair shall use the guidelines set forth in §§81.117, 81.124, and 81.125 of this title (relating to the Number of Election Workers per Polling Place, Number of Paper or Electronic Voting System Ballots per Voting Precinct, and Number of Direct Record Electronic Units (DRE) Units or Precinct Ballot Counters per Voting Precinct) to determine the necessary personnel, supplies, and equipment for each precinct (i.e. ballots, election judges and clerks, voting devices, or machines).

(c) After estimating the need for personnel, supplies, and equipment for each precinct, the county chair shall combine all precinct data to determine the total countywide estimate.

(d) The county chair may use the estimate calculated under subsection (c) of this section to determine the cost of the election.

§81.121. No Compensation for Attending Election Schools for Judges or Clerks.

(a) Training materials may be ordered free of charge from the Secretary of State.

(b) The county chair may not be reimbursed for materials published and provided by the Secretary of State.

(c) Cost associated with election judges and/or clerks for attending election school is not an allowable cost subject to primary reimbursement.

§81.123. Administrative Personnel Limited.

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections.

(c) Pursuant to §81.114 of this title (relating to Conflicts of Interest), no member of the county chair's family may be paid an administrative salary from primary funds.

(d) The county chair shall obtain prior written approval from the Secretary of State before administrative personnel are hired under this section. (The Secretary of State encourages the use of part-time administrative personnel.)

(e) If administrative personnel are required for the conduct of the primary election, salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than December 1, 2007, and ending no later than the last day of the month in which the last primary election is held.

(f) The county chair shall submit to the Secretary of State a list of all necessary personnel to be paid from the primary fund. This list must indicate the name and title of the employee, job duties, hours to be worked, period of employment, monthly or hourly rate of pay, and the estimated or actual gross pay for the period. (The county chair must also attach this information to each primary cost estimate and to the 2008 Final Primary Election Cost Report.)

(g) The county chair shall use the formula set out in the following figure to calculate the maximum total gross salaries that may be paid to administrative personnel. Salaries must be reasonable for the hours worked and services rendered and must reflect the salaries paid for similar work or services in the same area. In no circumstance may an employee who is paid from the primary fund be compensated more than \$2,500 for any one-month's work. If an individual is paid from the primary fund and that individual is also leasing space, furniture, or equipment to the party for the primary-election, then the lease amounts must be added to that person's salary to determine whether the allowable administrative-salary limit has been reached. Figure: 1 TAC §81.123(g) (No change.)

(h) If the county chair contracts with third parties or the county-elections officer for election services, the overall administrative personnel costs must be reduced to reflect the actual amount of work performed by the primary fund staff. (Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.)

(i) The Secretary of State may disallow full payment for administrative personnel if it is determined that the contracting county-elections officer substantially performed the conduct of the election.

§81.126. Training Reimbursement to Attend County Chairs Election Law Seminar.

(a) Except as provided by this section, the Secretary of State shall reimburse from the state primary fund, the actual travel expenses for the county chair or the county chair's designee to attend the Secretary of State's Election Law Seminar for County Chairs. (The Secretary of State shall provide travel reimbursement forms at the seminar.)

(b) The Secretary of State shall reimburse the county chair or the county chair's designee for:

- (1) mileage (if driving personal vehicle);
- (2) airfare (coach only);
- (3) airport transfers;
- (4) airport parking;
- (5) lodging; and

(6) any other reasonable expenses related to an individual's attendance at the Election Law Seminar for County Chairs.

(c) The Secretary of State shall use the Official State Mileage Guide to determine distances traveled to attend the Election Law Seminar for County Chairs. The Secretary of State shall reimburse mileage claims based on \$0.485 per mile from the county seat.

(d) The Secretary of State shall reimburse actual lodging expenses in an amount not to exceed \$85 per day, plus applicable taxes.

(e) As provided by the Texas General Appropriations Act, the Secretary of State shall not make reimbursements for gratuities or tips.

(f) The county chair or the chair's designee must submit actual receipts to the Secretary of State in order to be reimbursed for airfare, lodging, parking, or airport transfers.

(g) The Secretary of State shall make all travel reimbursement warrants payable to the county chair no later than 60 days after the seminar. If a request for reimbursement is submitted after this date, the Office of the Secretary of State shall deny the request.

§81.131. Contracting with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor-Collector).

(a) The Model Election Services Contract (the "Model Contract") prescribed by the Secretary of State is adopted by reference. Copies of the Model Contract may be obtained from the Secretary of State.

(b) The county chair shall use the Model Contract when executing an agreement for election services between the county executive committee and the county elections officer. (Contractible election services are listed in Subchapter B of Chapter 31 of the Texas Election Code.)

(c) The county chair shall submit to the Secretary of State for approval any change to the Model Contract or any alternate contract that the chair desires to use. A contract submitted under this subsection must be signed by both parties, the county chair and county election official. Secretary of State approval of the contract is required only if the county chair requests not to accept the pre-populated agreement and submits a request for approval to process a primary cost estimated report.

(d) Prior to the time that the chair submits final payment, the county elections officer must submit an accounting of the actual costs incurred in the performance of the election-services contract.

(e) Prior to the final payment of 25% of primary funds, the county chair shall provide to the Secretary of State, along with the Final Cost Report, a detailed billing Report of Actual Primary and Runoff Contracted Expenses (RPRCE) form prescribed by the Secretary of State all actual costs incurred in the performance of the election-services contract.

(f) The Secretary of State may only pay actual costs incurred by the county and payable under provisions of the Texas Election Code, an election-services contract, or these administrative rules.

(g) A contract may not allow for reimbursement for training of election workers or providing materials published by the Secretary of State.

(h) Salaries of personnel regularly employed by the county may not be paid from or reimbursed to the county from the primary fund even if the employee used their vacation time to perform the duties.

(i) A county-elections officer may not contract for the performance of any duty or service that he or she is statutorily obligated to perform.

(j) Costs associated with an election-services contract are not counted toward the administrative salary limits established under §81.123 of this title (relating to Administrative Personnel Limited).

(k) County officials who contract or conduct joint primaries must pay all bills for items they order on behalf of the parties, and seek reimbursements from the parties.

§81.134. Legal Expenses.

(a) The county chair shall contact the Secretary of State's Elections Division for legal advice concerning routine election law questions. (Attorneys with the Elections Division may be reached toll-free by calling 1-800-252-2216. There is no charge for this service.)

(b) The Secretary of State shall not provide primary-fund reimbursement for legal expenses resulting from the negligent or wrongful acts of the county chair, a member of the county executive committee, the county executive committee, or a staff member performing a statutory duty.

(c) The Secretary of State shall only pay legal expenses related to litigation concerning the conduct of the primary election.

(d) The county chair shall contact the Secretary of State before entering into a contract for legal services in order to obtain a determination from the Secretary as to whether the legal services are payable from the primary fund.

(e) The Secretary of State shall not reimburse legal expenses if the county chair fails to notify the Secretary of State of litigation within three business days following the receipt of service of process.

(f) Not later than 14 days after the county chair retains an attorney, the county chair shall provide to the Secretary of State written information concerning the background of the case and an estimate of the cost to defend the case.

(g) The county chair shall provide to the Secretary of State copies of all invoices related to legal expenses. The Secretary of State shall review all invoices for legal expenses and make a determination as to their reasonableness based on the novelty and complexity of the legal issues involved. The Secretary of State shall base payment of legal expenses upon the pay scale currently reflected in the State Bar of Texas Attorney Economic Survey--Hourly Rates in Texas Law Firms.

(h) The county chair shall file a final invoice for legal expenses no later than July 1 of the following year of the primary election year, unless the chair has requested and received a written authorization from the Secretary of State to extend the deadline.

(i) All legal billings submitted to the Secretary of State for reimbursement are subject to the Public Information Act (Chapter 552, Texas Government Code).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705710

Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: December 9, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5650



SUBCHAPTER G. JOINT PRIMARY ELECTIONS

1 TAC §§81.145, 81.148, 81.152, 81.155, 81.157

The Office of the Secretary of State adopts amendments to §§81.145, 81.148, 81.152, 81.155, and 81.157, concerning joint primary election funding, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7168). The sections will not be republished.

The amended sections concern the financing of the 2008 joint primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of joint primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

The amendments are necessary for the proper and efficient conduct of the 2008 joint primary elections. It is in the public interest to establish adequate procedures to insure the best use of state funding.

No comments were received regarding the proposal.

The amendments are adopted under the Election Code, §31.003 and §173.006, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Election Code and other election laws. It also allows the Secretary of State in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws. These sections additionally authorize the Secretary of State to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

Statutory Authority: Election Code, §31.003 and §173.006.

Cross reference to statute: Election Code, Chapter 173, Subchapter A, §173.006 is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 19, 2007.

TRD-200705709
Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: December 9, 2007
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-5650



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.436

The State Board for Educator Certification (SBEC) adopts an amendment to §230.436, relating to certificate issuance procedures. The amendment is adopted without changes to the proposed text as published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6722) and will not be republished. The section establishes the schedule of fees for certification services. The adopted amendment updates the national criminal history check fee in response to Senate Bill (SB) 9, 80th Texas Legislature, 2007, and adds an exception to the fee for reactivation of an inactive standard certificate when the certificate is placed on inactive status due to failure to submit the required criminal history record information.

Prior to the passage of SB 9, only new applicants for educator certification were required to be fingerprinted. SB 9 authorizes and requires that all certified educators who are or will be employed in public schools must submit fingerprints for the purpose of obtaining their national criminal histories and that those criminal histories must be reviewed by the Texas Education Agency (TEA) staff on behalf of the SBEC. The TEA staff has identified approximately 392,000 certified educators that SB 9 mandates must be fingerprinted by September 1, 2011.

The adopted amendment to 19 TAC §230.436 updates the national criminal history check fee in response to SB 9. The adopted amendment removes in paragraph (10) the specific fee of \$45 from rule and allows for a more flexible means of establishing the fingerprinting fee. This flexibility is needed due to the variability of fingerprinting fees set by the Texas Department of Public Safety (DPS), the Federal Bureau of Investigation (FBI), and other involved entities. Any or all of these entities may change their fees at any time, which would require additional rule amendments if a specific fee were to remain in rule. The adopted amendment also establishes this fee as non-refundable and specifies that the amount of the fee be posted on the SBEC website. It should be noted that an additional fee applies to the fingerprinting fee for the purpose of recovering the cost of the Texas Online Initiative as required by 19 TAC §230.438, E-Pay Supplemental Fee. In addition, the adopted amendment to 19 TAC §230.436 adds in paragraph (19) an exception to payment of the reactivation fee for an inactive standard certificate, if the certificate was placed on inactive status based on failure to satisfy the national criminal history record information review requirement in adopted new 19 TAC Chapter 232, General Certification Provisions, Subchapter C, National Criminal History Record Information Review of Active Certificate Holders. Adopted new 19 TAC Chapter 232, Subchapter C, can be found in the Adopted Rules section of this issue.

Following the September 2007 SBEC special meeting, notice of proposed amendment to 19 TAC §230.436 was filed with the *Texas Register* initiating the official public comment period.

The following comment was received regarding adoption of the amendment.

Comment. The Texas State Teachers Association commented that §230.436(10) should be amended to remove language that would require each certified educator to be responsible for the fees incurred in the certified educator's criminal history review in light of the request by the Governor, Lieutenant Governor, and Speaker of the House that the TEA use its transfer authority to pay these fees for current certified educators.

Response. The SBEC disagreed and took action to adopt, subject to State Board of Education (SBOE) review, the amendment as published as proposed. The TEA staff anticipates that there will be certified educators whose fees will not be paid by the state. The TEA covers costs for those certified educators who were full-time school employees when SB 9 became effective, the end of the 2006-2007 school year. Also, a certified educator may not receive a notice to submit criminal history information until 2011, and if the certified educator was not employed by a public school during the 2006-2007 school year, the certified educator will not be eligible for payment of the fee using state funds. In addition, this request is not part of SB 9 that created the criminal history review mandate, and is subject to review and amendment by the next legislature.

Therefore, while the TEA fully intends to implement the request of the Governor, Lieutenant Governor, and Speaker of the House, the ultimate responsibility to pay the national criminal history record information review fees is properly placed on the certified educator, subject to the provision in adopted new §232.905(c)(1) that these fees may be paid on the educator's behalf by another entity, which could include the state or the employing school district.

The SBOE took no action on the review of the adopted amendment to 19 TAC §230.436 at the November 16, 2007, SBOE meeting.

The amendment is adopted under the Texas Education Code (TEC), §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of TEC, Chapter 21, Subchapter B; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The adopted amendment implements the TEC, §21.041(c) and §22.0831(f).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 26, 2007.

TRD-200705845

Raymond Glynn

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

Effective date: December 16, 2007

Proposal publication date: September 28, 2007

For further information, please call: (512) 475-1497



CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER C. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW OF ACTIVE CERTIFICATE HOLDERS

19 TAC §§232.901, 232.903, 232.905, 232.907, 232.909

The State Board for Educator Certification (SBEC) adopts new §§232.901, 232.903, 232.905, 232.907, and 232.909, concerning national criminal history record information review of active certificate holders. New §§232.903, 232.905, and 232.909 are adopted without changes to the proposed text as published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6723) and will not be republished. New §232.901 and §232.907 are adopted with changes to the proposed text as published in the September 28, 2007, issue. The adopted new sections implement provisions for the expanded national criminal history record information reviews of active certificate holders.

Prior to the passage of Senate Bill (SB) 9, only new applicants for educator certification were required to be fingerprinted. SB 9 authorizes and requires that all certified educators who are or will be employed in public schools must submit fingerprints for the purpose of obtaining their national criminal histories and that those criminal histories must be reviewed by the Texas Education Agency (TEA) staff on behalf of the SBEC. The TEA staff has identified approximately 392,000 certified educators that SB 9 mandates must be fingerprinted by September 1, 2011. Adopted new 19 TAC Chapter 232, General Certification Provisions, Subchapter C, National Criminal History Record Information Review of Active Certificate Holders, establishes the requirements and procedures for obtaining the national criminal histories from certified educators who have not been previously fingerprinted. Specifically, the adopted new subchapter includes the following provisions.

Adopted new 19 TAC §232.901, Purpose, identifies the purpose of the subchapter in subsection (a). Definitions for certified educator, criminal history clearinghouse, national criminal history record information, school entity, and TEA staff have been defined in subsection (b). Subsection (c) delineates identifying information that must be submitted to the Texas Department of Public Safety (DPS) and entered into the DPS Criminal History Clearinghouse. Subsection (d) specifies that a certified educator may not be employed by a school district unless the required criminal history information has been submitted to the TEA staff and that information has been included in the DPS Criminal History Clearinghouse before September 1, 2011.

Adopted new 19 TAC §232.903, Required Assistance, establishes school district obligations to facilitate the fingerprinting procedure, including providing names and other identifying information for all certified educators who are employed by the district upon request by the TEA staff. The adopted new rules also require a district to cooperate with the SBEC, the TEA staff, and the DPS and its contractors to facilitate the process.

Adopted new 19 TAC §232.905, Submission of Required Information, specifies the procedures and timelines that must be followed by affected individuals and school entities as follows.

Adopted new subsection (a) establishes the timeline by which a school entity responds to the TEA staff's request for the names and contact information of all certified educators employed by the entity. This new subsection also provides that the informa-

tion submitted by the school entity be used to send notices to the certified educators required to submit their identifying information as part of the DPS Criminal History Clearinghouse. Also, the adopted new subsection requires the school entity to ensure that all certified educators offered employment in the future submit their identifying information to be entered into the DPS Criminal History Clearinghouse before employment.

Adopted new subsection (b) addresses the method by which certified educators are notified of their obligation to comply with the fingerprinting requirement. The certified educator is notified by e-mail at the e-mail address provided by the school entity. The notice describes the information to be submitted by the certified educator and the format in which it would be submitted. The notice also sets a date, at least 80 days from the date the notice is sent, by which the TEA staff must receive the certified educator's criminal history record information. The school entity will receive a copy of each notice sent to the certified educators and the deadlines for their submissions. The school entity ensures that affected certified educators have received the notice by obtaining written acknowledgment or by delivering a copy of the notice to the certified educator. As provided in adopted new subsection (b), the TEA staff sends a reminder notice by e-mail to the certified educator and his or her employing school entity stating that the certified educator's criminal history record information must be submitted within 25 calendar days.

Adopted new subsection (c) establishes an authorization form which certified educators are required to use to submit the necessary information. The adopted new subsection also specifies that the fee to obtain the national criminal history record information be paid by the certified educator and that the fee be the same as that paid by applicants for certification. Adopted new subsection (c) adds language to allow another entity, such as the state or a school district, to pay the national criminal history record information fee on behalf of the educator. Also, adopted new subsection (c) specifies that only fingerprint information properly authorized by the TEA staff satisfies the requirements of the TEC, §22.0831, and be entered into the DPS Criminal History Clearinghouse.

Adopted new 19 TAC §232.907, Inactive Status, requires in subsection (a) that an educator's certificate be placed on inactive status for failure to comply with this subchapter. Adopted new subsection (b) allows for an extension not to exceed 10 calendar days, for good cause shown, before the educator's certificate is placed on inactive status. Only a person designated by the SBEC has the authority to grant the extension. In adopted new subsection (c), a certified educator whose certificate is inactive is considered ineligible for employment in a Texas public school in a position that requires educator certification. Subsection (d) provides for an educator's certificate status to be restored when TEA staff receives the certified educator's national criminal history record information as required by this subchapter.

Adopted new 19 TAC §232.909, State Board for Educator Certification Review of National Criminal History Information, provides that a certified educator's national criminal history record information obtained through the procedures described in this subchapter be reviewed by the TEA staff in accordance with 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases.

Additional Recommended Changes to 19 TAC Chapter 232, Subchapter C, Since Published as Proposed

In response to public comment, a clarifying change has been made to 19 TAC §232.907(b) to clarify that the extension is limited to one time for 10 days before a certificate is placed on inactive status to allow for completion of the national criminal history record review. Also, a minor, technical edit was made to change "whom" to "which" for consistency in 19 TAC §232.901(d).

In response to SB 9, an amendment to §230.436, Schedule of Fees for Certification Services, is adopted and can be found in the Adopted Rules section of this issue. The adopted amendment updates the national criminal history report fee.

The following reflects changes to the fiscal implication statement published with the proposal. The fiscal implications are based on approximately 392,000 certified educators, identified by the TEA staff, who must be fingerprinted by September 1, 2011.

As described, the fiscal implications have been affected by a request from the Governor, Lieutenant Governor, and Speaker of the House that the TEA use its transfer authority to cover the costs of conducting criminal history record information reviews of currently active certified educators who have not previously undergone a criminal history record information review as a condition of certification.

For the TEA, the total estimated cost is \$2,285,847 for Fiscal Year (FY) 2008 and \$1,550,347 for each year of FY 2009-FY 2012. The total estimated cost for each year of FY 2008-FY 2012 includes \$1,036,247 for personnel costs and \$237,600 to cover rent and travel. The total estimated cost also includes other operating expenses estimated at \$180,000 for FY 2008 and \$67,500 for each year of FY 2009-FY 2012. The total estimated cost for software is \$832,000 for initial development in FY 2008 and \$209,000 for maintenance for each year of FY 2009-FY 2012.

For the Texas Department of Public Safety (DPS), the total estimated cost for each year of FY 2008-FY 2011 is approximately \$3.8 million to conduct the background checks. For the Department of Information Resources (DIR), the total estimated cost for each year of FY 2008-FY 2011 is \$196,000 to cover costs for online services.

The estimated increase in revenue for the TEA is \$588,000 for each year of FY 2008-FY 2011. For the DIR, the estimated increase in revenue is \$196,000 for each year of FY 2008-FY 2011. For the DPS, the estimated increase in revenue is approximately \$3.8 million for each year of FY 2008-FY 2011. The TEA will distribute fees to the DIR to cover costs for online services and to the DPS to cover costs for background checks.

There are no anticipated economic costs to persons required to comply with the adopted new 19 TAC Chapter 232, Subchapter C. The estimated costs to the approximately 98,000 certified educators annually for four years to complete the required background checks would have been approximately \$4,606,000 annually over four years. These costs, however, will be paid by the state.

The TEA will use the agency's transfer authority to cover the costs of conducting criminal history record information reviews as required by SB 9, except internal agency expenditures.

Following the September 2007 SBEC special meeting, notice of proposed new 19 TAC §§232.901, 232.903, 232.905, 232.907, and 232.909 was filed with the *Texas Register* initiating the official public comment period. The following comments were received regarding adoption of the new sections.

Comment. The Texas Chapter of the American Federation of Teachers (Texas AFT) commented that §232.905(b)(5) should be amended to provide that the notice given 25 days before the deadline to an educator that his or her criminal history information has not been received should be sent by certified mail, rather than by e-mail.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the new section as published as proposed. The notice will be given to both the educator and his or her employing school district at an e-mail address that has been verified by the school district at the beginning of the 80-day notice period. The SBEC finds that this procedure will provide the fastest and most reliable way of ensuring that each educator receives this notice in time to comply.

Comment. The Texas State Teachers Association (TSTA) commented that §232.905(c)(1) should be amended to remove language that would require each certified educator to be responsible for the fees incurred in the certified educator's criminal history review in light of the request by the Governor, Lieutenant Governor, and Speaker of the House that the TEA use its transfer authority to pay these fees for current certified educators.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the new section as published as proposed. The TEA staff anticipates that there would be certified educators whose fees would not be paid by the state. The TEA would cover costs for those certified educators who were full-time school employees when SB 9 became effective, the end of the 2006-2007 school year. Also, a certified educator may not receive a notice to submit criminal history information until 2011, and if the certified educator was not employed by a public school during the 2006-2007 school year, the certified educator would not be eligible for payment of the fee using state funds. In addition, this request is not part of SB 9 that created the criminal history review mandate, and is subject to review and amendment by the next legislature.

Therefore, while the TEA fully intends to implement the request of the Governor, Lieutenant Governor, and Speaker of the House, the ultimate responsibility to pay the national criminal history record information review fees is properly placed on the certified educator, subject to the provision in proposed new §232.905(c)(1) that these fees may be paid on the educator's behalf by another entity, which could include the state or the employing school district.

Comment. The TSTA commented that §232.907 should be modified to provide that, upon showing of good cause, the agency has unlimited discretion to extensions of the 80-day deadline. Further, the TSTA recommends that this section should be modified to provide an educator with the right to a contested case proceeding before the State Office of Administrative Hearings and the SBEC before an educator may be placed on inactive status for failure to submit to the national criminal history record information review.

Board Response. The SBEC disagreed that the full 80-day compliance period plus the additional discretionary 10-day extension would be an inadequate amount of time to allow for compliance with the national criminal history record information review requirement. Such a deadline would be necessary to ensure timely compliance with the statutory requirements and carry out the purpose of SB 9.

Inactive status would not be equivalent to a revocation or suspension of a certificate based on a final adjudication; it would

be an interim action to ensure that all certified educators comply with the requirement of statute in a timely fashion. No reactivation fee or formal application would be required for the certified educator to regain active status. The certified educator would submit the required national criminal history record information in order to have his or her certificate returned to active status. This process would be similar to the process used for reactivation of a certificate when the SBEC places a certificate holder on inactive status for failure to timely renew a certificate. There is no contested case proceeding because no adjudication is necessary.

In order to ensure that each certified educator would receive ample notice of the requirement for submission of the national criminal history record information, the proposed new rules would provide for verification of receipt of the 80-day notice to submit criminal history information by the educator's employing school district and would require an additional notice to both the certified educator and the employing school district 55 days after the original notice. The certified educator would still have 25 days remaining during which to submit the national criminal history record information.

The SBEC took action to adopt, subject to SBOE review, the new section with changes since published as proposed to clarify that the 10-day extension is limited to one time.

Comment. The Texas AFT commented that §232.907(a) should be amended to change the word "shall" to "may," so that the SBEC would have discretion to decide whether to place an educator's certificate on inactive status if the educator does not meet the deadline for submission of his or her criminal history information.

Board Response. The SBEC disagreed. The Texas Education Code (TEC), §22.0831, requires the SBEC to place an educator's certificate on inactive status if the educator does not meet the deadline for submission of his or her criminal history information. The SBEC took action to adopt, subject to SBOE review, the new section with changes since published as proposed to clarify that the 10-day extension is limited to one time.

Comment. The SBEC legal counsel asked for clarification whether the extension provided in §232.907(b) was intended to be limited to one time for 10 days before a certificate is placed on inactive status.

Board Response. The SBEC agreed and took action to adopt, subject to SBOE review, the new section with changes since published as proposed.

Comment. The Association of Texas Professional Educators, the TSTA, and the Texas AFT commented that §232.907(b) should be amended to remove the one time 10-day limitation on an extension of an educator's deadline to submit national criminal history record information. The Texas AFT commented that the SBEC should note that the extension in the rule as proposed was only 10 calendar days rather than 10 business days. The associations also recommended that there should be no limit on such extensions if the educator can show good cause for failing to comply.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the new section with changes since published as proposed to clarify that the 10-day extension is limited to one time. The TEC, §22.0831, as added by Senate Bill (SB) 9, 80th Texas Legislature, 2007, mandates that the SBEC place an educator's certificate on inactive status for failure to

comply with a deadline for submitting required criminal history information. The SBEC finds that allowing unlimited extensions would conflict with statute. In addition, educators will receive multiple notices of the deadline and will be able to check the status of their criminal history information at any time on the SBEC website.

The State Board of Education (SBOE) took no action on the review of the adopted new 19 TAC §§232.901, 232.903, 232.905, 232.907, and 232.909 at the November 16, 2007, SBOE meeting.

The new sections are adopted under the Texas Education Code (TEC), §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of TEC, Chapter 21, Subchapter B; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The new sections implement the TEC, §21.041(c) and §22.0831(f).

§232.901. Purpose.

(a) This subchapter provides rules for the implementation of the criminal history record information review under the Texas Education Code (TEC), Chapter 22, Subchapter C.

(b) The following words, terms, and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certified educator--An employee or applicant for employment at a school entity who holds a Texas educator certification issued under the TEC, Chapter 21, Subchapter B, as required by the TEC, Chapter 22, Subchapter C, to whom the TEC, §22.0831, and this subchapter apply.

(2) Criminal History Clearinghouse--An electronic clearinghouse and subscription service established by the Texas Department of Public Safety (DPS), as defined by the Texas Government Code, §411.0845.

(3) National criminal history record information--Criminal history record information obtained from both the Texas Department of Public Safety and the Federal Bureau of Investigation, as defined by the TEC, §22.081.

(4) School entity--A school district, open-enrollment charter school, or shared services arrangement.

(5) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's (SBEC's) administrative functions and services.

(c) A certified educator shall submit fingerprint, photograph, and identification information to the DPS in the form the DPS requires for the purpose of entering the person's national criminal history record information into the Criminal History Clearinghouse.

(d) A certified educator may not be employed by a school entity on or after September 1, 2011, unless the certified educator's national criminal history record information has been entered into the Criminal History Clearinghouse and made available to the SBEC and the school entity by which the certified educator is employed.

§232.907. Inactive Status.

(a) If the Texas Education Agency (TEA) staff has not received a certified educator's national criminal history record information as required by this subchapter by the date specified in the notice described

in §232.905(b) of this title (relating to Submission of Required Information), the educator's certificate shall be placed on inactive status.

(b) For good cause shown, the date on which a certified educator's certificate becomes inactive may be extended one time for a period not to exceed ten calendar days. Such an extension may only be granted by a person designated for this purpose by the SBEC, and the decision to grant or deny a request for extension shall be within the designee's sole discretion.

(c) An educator whose certificate is in inactive status is ineligible for employment in a Texas public school in a position that requires educator certification, pursuant to the Texas Education Code, §21.003(a) and §22.0831(d).

(d) An educator's certificate shall be removed from inactive status and reactivated when the TEA staff receives a certified educator's national criminal history record information as required by this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 26, 2007.

TRD-200705846

Raymond Glynn

Associate Commissioner, Educator Quality and Standards, Texas Education Agency

State Board for Educator Certification

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For further information, please call: (512) 475-1497

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**CHAPTER 249. DISCIPLINARY
PROCEEDINGS, SANCTIONS, AND
CONTESTED CASES**

The State Board for Educator Certification (SBEC) adopts the repeal of §249.1 and §§249.45 - 249.56 and amendments to §§249.3 - 249.7, 249.9 - 249.15, 249.17 - 249.33, and 249.35 - 249.44, concerning disciplinary proceedings, sanctions, and contested cases, including the enforcement of the educator's code of ethics. The repeal of §249.1 and §§249.45 - 249.56 and the amendments to §§249.3 - 249.7, 249.9 - 249.12, 249.14, 249.15, 249.18 - 249.33, 249.35, 249.36, and 249.38 - 249.44 are adopted without changes to the proposed text as published in the August 31, 2007, issue of the *Texas Register* (32 TexReg 5604) and will not be republished. The amendments to §§249.13, 249.17, and 249.37 are adopted with changes to the proposed text as published in the August 31, 2007, issue.

The TEC, §21.041(b)(7), authorizes the SBEC to adopt rules that provide for disciplinary proceedings for certificate holders. The SBEC adopts the following changes to 19 TAC Chapter 249 to improve and enhance the disciplinary investigation process and to align with statute.

Process Improvements

The adopted changes to Chapter 249 streamline processes to make them more uniform and to reflect practice before the State Office of Administrative Hearings (SOAH).

The adopted changes make the process to initiate a contested case more uniform. The current rules provide for contested case hearings in several instances (see §§249.11, 249.12, 249.13, 249.15, and 249.16). Each type of contested case has different filing requirements. The adopted changes establish a uniform procedure where the party who bears the burden of proof will be required to file a petition that conforms to the requirements in the SBEC rules and the SOAH rules. The responding party will be required to file an answer that also conforms to the requirements in the SBEC rules and the SOAH rules. By requiring a petition and an answer in each type of contested case, the contested case process will be more efficient, because the petition and the answer will help focus the hearing on the issues that are contested. As a result of the June 2007 stakeholder meeting, language has been modified in §249.24 to further clarify that the date of filing will be a rebuttable presumption in subsection (b). Also, new subsection (c) has been added to allow the parties the ability to exchange documents electronically if both parties agree.

The adopted changes allow the petition and the answer to be filed before the case is referred to the SOAH. The current rules require the contested case to be filed with the SOAH before both the petition and answer have been filed. This requirement has led to many cases being filed at the SOAH that are subsequently dismissed because a party fails to make a required filing. The current rules also require an administrative law judge to issue a proposal for decision before the SBEC can take certain actions, even when the other party has defaulted. The adopted changes to §249.35 allow the SBEC to take action directly in any default. The certificate holder will be notified of the proposed default order and the certificate holder will have the ability to appear at an SBEC meeting to explain why he or she failed to make the required filing. The SBEC will have the ability to issue the default or send the matter back to TEA staff to hold a contested case hearing.

As a result of the June 2007 stakeholder meeting, language has been added in §249.18(c) to allow TEA staff to file a case with the SOAH at any time. This modification allows staff to file its case without first exchanging pleadings with the certificate holder. Also, language has been amended in §249.27(a) to clarify that a written answer shall be filed with the petitioner and in §249.27(e) to state that a dismissal based upon an answer's failure to comply with the requirements of §249.27 will need to be supported by a proposal for decision issued by an administrative law judge.

The process for canceling an erroneously issued certificate in §249.13 has been revised to reflect the use of the virtual certificate rather than a paper certificate. The current rules require a contested case hearing before the SBEC can cancel a certificate that is issued in error if the person does not return it. The adopted changes allow the SBEC to cancel the certificate and treat the person who received the certificate as though the underlying application were administratively denied. That person will be able to appeal the administrative denial of their application.

In response to public comment, language in §249.13(a) has been amended to include a procedure to allow the person issued the certificate to show cause why the certificate should not be cancelled.

The decision-making guidelines in §249.17 have been revised to simplify the analysis for assessing the appropriate penalty. The new guidelines rely on six factors, rather than the 14 factors in

the current rule. The adopted changes focus more on the nature of the offense, and the changes take into account the SBEC's obligation to deter future violations. The current rules list several factors that are redundant; require the SBEC to predict future behavior based on subjective evidence; require the SBEC to consider irrelevant factors, such as the person's ability to make restitution; and fail to identify key factors, such as whether the sanction will deter future misconduct. The adopted changes also identify certain very serious offenses for which the appropriate penalty is the permanent revocation of the educator's certificate. These changes are shown in §249.17(d). In response to public comment, §249.17(d)(5) has been modified to clarify that a sanction for possession of a controlled substance would apply only when the educator does not have a prescription for the substance.

As a result of the June 2007 stakeholder meeting, language in §249.17(d) has been modified to: add specificity to the grounds for permanent revocation or denial; add a cross-reference for the term "solicitation of a romantic relationship," which is already defined in §249.14(m); use the term "criminal homicide" for consistency with the Texas Penal Code; and replace the term "drugs" with the more specific term, "controlled substance defined in the Texas Health and Safety Code, Chapter 481." In §249.15(c) - (e), language has been modified to clarify that the filing of a petition and answer will take place before the case is filed before the SOAH, and if the certificate holder fails to file timely an answer, TEA staff may take the default to the SBEC for the entry of a default order.

Elimination of Modification Process

The adopted changes eliminate the open-ended process to modify sanctions contained in §249.45, which make most SBEC actions final upon entry of an order. The current rules provide an open-ended process by which an educator can seek to modify any sanction that has previously been issued. The adopted repeal of §249.45 is necessary since §249.45 relies on many irrelevant factors, such as whether the certificate holder has paid child support or has received an offer of employment. Section 249.43 still provides a procedure for reinstating a suspended certificate. Section 249.44 also provides a procedure for reapplication following the revocation, cancellation, or denial of a certificate, but allows the SBEC to permanently revoke, deny, or accept a permanent surrender of a certificate. Also, the adopted changes in §249.44 allow for reapplication every five years, rather than every year.

As a result of the June 2007 stakeholder meeting, language in §249.43(a) has been amended to allow the person to apply for a duplicate certificate up to 30 days prior to the end of the suspension period.

Elimination of Procedural Rules Governing the Educator's Code of Ethics

As a result of the June 2007 stakeholder meeting, the procedural rules for the enforcement of the educator's code of ethics found in Chapter 249, Subchapter F, have been repealed. The disciplinary rules currently allow for the prosecution of alleged violations of the educator's code of ethics. The stakeholders suggested that the procedural rules for the enforcement of the educator's code of ethics found in Chapter 249, Subchapter F, be eliminated, and that TEA staff should be allowed to prosecute alleged violations of the educator's code of ethics through its disciplinary rules. The stakeholders agreed that the procedural rules for the educator's code of ethics have proved to be cumber-

some and inefficient by requiring formal responses, dispositions, and appeals for each and every complaint filed and created unnecessary expenses for the educators and the school districts. The stakeholders agreed that the previous modifications to the procedural rules allow a more efficient resolution by TEA staff, but noted that these reforms still required formal responses from educators for each and every complaint. Finally, the stakeholders agreed that when serious unethical conduct is alleged, that TEA staff will have the ability to aggressively prosecute this alleged misconduct under authority granted under §249.15(c)(3), and that the new procedural rules provide a superior process for prosecuting these complaints.

Clarification of Notice Procedure

The adopted changes clarify the manner in which the Texas Education Agency (TEA) staff will notify a person of an action taken under Chapter 249. Pursuant to the adopted changes in §249.30(c), the TEA staff will send the notice to the address that is supplied to the TEA pursuant to the certification rules and any other address that is known to the TEA. This clarifies existing policy that the TEA staff send notice to any address that the TEA staff is aware of, but that the TEA staff is not obligated to search for the person when the TEA staff does not have the person's address.

Dispositions Prior to Hearing

In instances where a petition and answer have been filed, but one of the parties fails to appear, the adopted changes in §249.35 provide a procedure where the administrative law judge abates the proceedings and defers to the SBEC for a disposition. Pursuant to §249.35(c), the SBEC will have the ability to grant a default judgment. The administrative law judge will dismiss the case from the docket when he or she receives notice that the SBEC has disposed of the case.

The rules allow the SBEC to dispose of cases before a hearing for a variety of reasons, including the unnecessary duplication of proceedings.

As a result of the June 2007 stakeholder meeting, language in §249.35 has been amended in subsection (c) to allow the SOAH in addition to the SBEC to dispose of a case; in subsection (d) to provide that findings of fact and testimony considered at an employment hearing held under the TEC, Chapter 21, are admissible in the administrative hearing, but not conclusive; and in subsection (e)(3) to add specificity that when the certificate holder or applicant fails to appear, the SOAH will abate the case so that the SBEC may enter a final order.

Exceptions to a Proposal for Decision

The adopted changes add §249.37(d) to identify the reasons that a party may file exceptions to a proposal for decision.

In response to public comment, language in §249.37(d)(5) has been modified to state that exceptions to a proposal for decision may be based on finding of fact that is not supported by the preponderance of the evidence.

Final Decisions and Orders

The adopted changes modify §249.39(d) to clarify that the SBEC may adopt an order that modifies the findings of fact or conclusions of law contained in a proposal for decision as authorized by the Administrative Procedure Act. The adopted changes to §249.39(d) also allow the SBEC to remand the matter back to the administrative law judge with instructions to make an essential finding of fact or to apply the correct burden of proof.

Appeals from Final Orders

The adopted changes add §249.40(c) to identify the standard of review for appeals from a final order, which is the substantial evidence standard of review. The adopted changes also add §249.40(d), which will make the party who appeals the decision responsible for the cost of transcribing the testimony and preparing the record.

Reapplication Following a Surrender or Revocation

The adopted changes modify §249.44(a) to require that when a person whose certificate was previously surrendered or revoked reapplies, that person must comply with the current certification requirements, including having a recommendation from an approved program.

Virtual Certificate

The adopted changes add a definition of the term "virtual certificate" in §249.3(46), which makes the virtual certificate the official certification record. Throughout Chapter 249, modifications will also be made to reflect the use of the virtual certificate as the official certification record.

Quorum

The definition for the term "quorum" in §249.32 means a majority of all members of the SBEC (including non-voting members), consistent with the definition in the SBEC's operating policies and procedures and applicable law.

Administrative Denials

Two additional grounds relating to administrative denial have been added in §249.12. The adopted changes provide for TEA staff to deny an application if it is fraudulent (§249.12(b)(3)) or if the applicant committed a crime relating to the duties of the teaching profession while the applicant's certificate was suspended (§249.12(b)(6)).

Disciplinary Actions

The list of actions that are grounds for disciplinary action against a certificate holder has been expanded in §249.15(b)(7) to include grounds for action listed in §§249.14(g), 249.12(b), and 249.16.

As a result of the June 2007 stakeholder meeting, language has been added to §249.15(a)(3) to clarify that a probated suspension for a set term may be issued by the SBEC.

Cancellation of Scores from a Certification Examination

The adopted changes to §249.11(a) allow the TEA staff to cancel an examinee's test scores and bar a person from retaking the test. The examinee will still be allowed to appeal as provided in the rule.

Mailbox Rule

Throughout Chapter 249, a rebuttable presumption has been created that mail is received five calendar days after it has been mailed (see §§249.11(b), 249.26(c), and 249.27(a)).

Elimination of Unnecessary Provisions

Section 249.1, Board's Regulatory Authority, and several definitions in §249.3, Definitions, have been repealed as unnecessary.

Technical Changes

Throughout Chapter 249, numerous grammatical and technical changes have been made, such as replacing the term "Agency"

with the term "TEA staff" and replacing the term "Board" with the term "State Board for Educator Certification." Also, statutory citation references have been updated and standardized to reflect current law and *Texas Register* formatting requirements. Sections have also been restructured for consistency and readability.

Changes to Comply with Senate Bill 9, 80th Texas Legislature, 2007

As a result of passage of SB 9, changes are adopted to §249.14. Language in subsection (h) has been amended to require an immediate notice be placed on an educator's certification record if the alleged conduct presents a risk to a student or minor. Also, subsection (i) has been amended to provide procedures for this immediate notice.

Following the July 2007 SBEC meeting, notice of repeal of 19 TAC §§249.1 and 249.45-249.56 and amendments to §§249.3-249.7, 249.9-249.15, 249.17-249.33, and 249.35-249.44 were filed with the *Texas Register* initiating the official public comment period. The following comments were received regarding adoption of the changes.

Comment. The Texas Classroom Teachers Association (TCTA) commented that §249.4(a)(2) should not be repealed and maintained that doing so would result in an inaccurate characterization of the SBEC mandate to enforce the educator's code of ethics. The TCTA recommended that subsection (a)(2) remain as it currently appears in the rule.

Board Response. The SBEC disagreed and took action to adopt, subject to State Board of Education (SBOE) review, the rule as published as proposed. Section 249.4(a)(1) provides that Chapter 249 governs disciplinary matters before the SBEC, including proceedings where sanctions are sought against a certificate holder. Also, §249.15(b)(3) allows the SBEC to sanction an educator's certificate if the educator violated the educator's code of ethics.

Comment. The Texas State Teachers Association (TSTA) commented that §249.12, which relates to administrative denials and appeals, should be revised so that the SBEC would bear the burden of proof as it relates to the alleged conduct that forms the basis for the denial of the application.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. Traditionally, the applicant for an occupational license must demonstrate that they have met the requirements for certification. It is the applicant's responsibility to demonstrate that the person is entitled to receive the certificate, and therefore, the applicant bears the burden of proof.

Comment. The Texas Chapter of the American Federation of Teachers (Texas AFT) commented that §249.12 would allow the TEA staff to deny an application for certification without ever allowing the SBEC to consider the matter.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. Section 249.12(e) provides that when an applicant appeals an administrative denial, the matter will be referred to the SOAH for a contested case hearing. Section 249.36(a) requires the administrative law judge (ALJ) to prepare a proposal for decision. Section 249.39(a) provides that the SBEC will issue a final order after considering a proposal for decision.

Comment. The Association of Texas Professional Educators (ATPE) commented that §249.12, which relates to the appeal of an administrative denial, does not include a deadline for the TEA staff to forward a petition to the SOAH. The ATPE suggested that the rule should require the TEA staff to refer any petition to the SOAH within 60 days of receipt.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The current rule does not provide a time limit to refer petitions to the SOAH. Such a time limit could create a situation where the SBEC would have to issue a certificate to an applicant who is not worthy to instruct because the SBEC failed to refer a petition to the SOAH within 60 days of receipt. The SBEC decided that this would pose an unacceptable risk to Texas schoolchildren.

Comment. The Texas AFT commented that §249.12(b)(6) would allow the TEA staff to deny an application upon satisfactory evidence that a person has committed conduct that would constitute a crime or offense, relating directly to the duties and responsibilities of the education profession, and that this would permit the TEA staff to deny applications based on unsubstantiated allegations.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. When a person commits a criminal offense, the burden of proof to obtain a conviction is higher than is required at an administrative hearing. There are situations where there is enough evidence to support a finding in an administrative hearing, but the evidence would be insufficient to obtain a criminal conviction, or when a prosecutor may decline to prosecute a case for a reason other than inability to prove a case. Regardless whether a criminal law enforcement agency prosecutes a case, the SBEC must take action necessary to protect Texas students.

Comment. The TSTA commented that §249.13, relating to the cancellation of erroneously issued certificates, should include a provision providing for notice to the educator and an opportunity to show cause why the certificate was not issued erroneously.

Board Response. The SBEC agreed and took action to adopt, subject to SBOE review, the rule with changes since published as proposed to include a procedure to allow the person issued the certificate to show cause why the certificate should not be cancelled.

Comment. The ATPE commented in support of language that was added to §249.13, allowing educators an opportunity to show cause why the certificate should not be cancelled.

Board Response. The SBEC agreed and took action to adopt, subject to SBOE review, the rule with changes since published as proposed to include a procedure to allow the person issued the certificate to show cause why the certificate should not be cancelled.

Comment. The ATPE commented that the elimination of the term "as provided by law" from §249.15(b)(6), which relates to the duty of an educator to cooperate with an investigation, would allow the SBEC to sanction an educator's certificate if the educator asserts his or her Fifth Amendment right against self-incrimination in an administrative hearing. The ATPE suggested that the provision be restated to authorize a sanction only when an educator actively interferes with a TEA investigation.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as pro-

posed. There is currently a well-developed line of cases that define when a certificate holder may assert his or her Fifth Amendment right during an administrative hearing. See *Lozano v. Lozano*, 52 S.W.3d 141, 150 (Tex. 2001). If the person has not lawfully asserted his or her Fifth Amendment right, the ALJ may draw reasonable inferences from a party's assertion of the privilege against self-incrimination.

Comment. The ATPE commented in support of the SBEC's direction to: (1) withdraw amendments initially proposed by the TEA staff for §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes, and (2) request an Attorney General opinion.

Board Response. The SBEC agreed and took no action to amend this rule.

Comment. The Texas AFT commented that §249.17(c)(5) is highly subjective with no realistic means to test the accuracy and efficacy of its application. Section 249.17(c)(5) allows the SBEC to consider the deterrent effect of their orders when making decisions in a contested case.

Board Response. The SBEC disagreed. The SBEC issues sanctions for reasons beyond punishment of an educator. The SBEC also issues sanctions in order to deter that educator from committing future acts of misconduct and to deter other educators from committing similar acts of misconduct.

The SBEC took action to adopt, subject to SBOE review, the rule with changes since published as proposed to clarify that a sanction for possession of a controlled substance would apply only when the educator does not have a prescription for the substance.

Comment. The TCTA and the ATPE commented that §249.17(d) should have the word "shall" changed to "may" with regards to the SBEC permanently revoking the teaching certificate. The change would allow SBEC to impose permanent revocation when the SBEC believes it is appropriate, but would give the SBEC flexibility to decline to do so in the face of mitigating circumstances or inconclusive evidence.

Board Response. The SBEC disagreed. The proposed changes to §249.17(d) would identify types of misconduct for which the SBEC would consider permanent revocation or denial and would not excuse the misconduct on mitigating circumstances. Inconclusive evidence goes to the weight of the evidence that the misconduct occurred. The proposed changes would make it clear to the public and to the regulated educators that this type of misconduct would not be tolerated.

The SBEC took action to adopt, subject to SBOE review, the rule with changes since published as proposed to clarify that a sanction for possession of a controlled substance would apply only when the educator does not have a prescription for the substance.

Comment. The ATPE commented that the new provision in §249.17(d), which requires the permanent revocation of an educator's certificate if the holder solicited a romantic relationship with a student, is too harsh. The ATPE contends that the newly adopted definition of "solicitation of a romantic relationship" is too broad. The ATPE also commented that the mandatory nature of the rule gives the TEA staff no flexibility and may lead to unintended consequences. The ATPE suggested that the rule be narrowed by changing the word "shall" to "may." The ATPE also suggested that a provision be added to reserve

permanent revocation for instances where there has been a criminal conviction or a deferred adjudication. In the alternative, the ATPE suggested permanent revocation only be required when there has been an arrest or an indictment issued for a criminal act based on the solicitation of a romantic relationship with a student.

Board Response. The SBEC disagreed. The requirement that an educator's certificate be permanently revoked for soliciting a romantic relationship with a student is justified based on the seriousness of the offense. The definition for "solicitation of a romantic relationship" is not too broad, because it requires a determination that the educator committed deliberate or repeated acts that can be reasonably interpreted as soliciting a relationship, characterized by an ardent emotional attachment or pattern of exclusivity. The SBEC determined that this type of behavior is so egregious that it should result in the permanent revocation of the teaching certificate.

The SBEC disagreed with the proposal to add language which would require some action by law enforcement before the SBEC could take action under this section. Some of the offenses, such as the solicitation of a romantic relationship, may not be criminal offenses. In other cases, the SBEC may make factual determinations regarding whether an offense occurred regardless of whether criminal charges were pursued. In these cases, when the SBEC is able to prove that the misconduct occurred, the SBEC has determined that the appropriate sanction is the permanent revocation of the certificate.

The SBEC took action to adopt, subject to SBOE review, the rule with changes since published as proposed to clarify that a sanction for possession of a controlled substance would apply only when the educator does not have a prescription for the substance.

Comment. The TCTA commented that §249.17(d)(1) would require the permanent revocation of a teaching certificate for an educator who has "engaged in or solicited any sexual contact or romantic relationship with a student." The TCTA contends that §249.14(m) broadly defines the term solicitation of a romantic relationship and that the definition may capture innocent communications between the student and the educator. The TCTA recommended that §249.17(d)(1) be removed as a basis for mandatory permanent revocation.

Board Response. The SBEC disagreed. Section 249.14(d) identifies types of communications which the TEA staff may consider when determining whether the educator has solicited a romantic relationship with a student. Section 249.17(d)(1) would apply when the communication may be reasonably interpreted as encouraging the student to form an ardent or exclusive emotional attachment to the educator, thus the rule would not apply to situations where the educator is not encouraging the student to form such an attachment.

The SBEC took action to adopt, subject to SBOE review, the rule with changes since published as proposed to clarify that a sanction for possession of a controlled substance would apply only when the educator does not have a prescription for the substance.

Comment. The TCTA commented that §249.17(d)(5) would require the permanent revocation of an educator's certificate for possession, transfer, sale or distribution of a controlled substance on school property. The TCTA contends that these educators can be rehabilitated and could become effective counselors because they can personally demonstrate success-

ful recovery. The TCTA recommended that §249.17(d)(5) be removed as a basis for mandatory permanent revocation or be amended to allow for the possession of a controlled substance when the educator has a prescription for the substance.

Board Response. The SBEC disagreed in part and agreed in part. The possession, transfer, sale, or distribution of a controlled substance by an educator on school property is an egregious offense. It demonstrates an extreme lack of judgment on the part of the educator. Educators are often role models for students, and an educator who has possessed, transferred, sold, or distributed controlled substances on school property may encourage students to engage in similar behavior. The necessity to deter such behavior through the implementation of §249.17(d)(5) would outweigh any potential loss of an educator who may reform and become a counselor. The proposed amendment would not broadly apply to all persons who have had a previous history with controlled substances. It would only apply to currently certified educators who bring a controlled substance onto school property.

The SBEC agreed with amending language to allow for the possession of a controlled substance when the educator has a prescription for the substance. The SBEC took action to adopt, subject to SBOE review, the rule with changes since published as proposed to provide for that clarification.

Comment. The ATPE commented that proposed §249.18, which relates to petitions for a contested case hearing, does not have any timelines for the TEA staff to refer the matter to the SOAH. The ATPE suggested that the rule be modified to require that the TEA staff refer the matter to SOAH within 60 days of the receipt of the certificate holder's answer or an applicant's petition.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The current rule does not provide a time limit to refer petitions to the SOAH. The creation of such a time limit could potentially force the SBEC to issue a certificate to an applicant who is not worthy to instruct or presents a danger to students simply because the TEA staff failed to refer a petition to the SOAH within 60 days of receipt. The creation of such a time limit could also potentially prevent the SBEC from sanctioning the certificate of an educator who committed serious misconduct because the TEA staff was not able to refer the answer to the SOAH within 60 days of receipt. The SBEC decided that these situations would pose an unacceptable risk to Texas schoolchildren. Furthermore, no law imposes such a requirement.

Comment. The ATPE commented that §249.26(b)(6) refers to a petition that imposes sanctions against an educator, but that the petition only seeks sanctions and that the word "imposes" should be changed to "seeks."

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The provision merely states what elements must appear in the petition. Section 249.26(b)(6) states that if a petition imposes sanctions, then it must contain a warning that the sanctions may be issued by default if the certificate holder fails to file an answer.

Comment. The ATPE commented that §249.27(a) requires answers to be sent to the opposing party by both certified and regular mail, but that there was no way to prove that the answer was sent via regular mail. The ATPE suggested that the answers be sent by certified mail.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The practice of sending mail through both certified and regular mail is to deal with a situation where one party does not claim the certified mail. At that point, the answering party may submit evidence that the regular mail answer was properly mailed, despite the opposing party's refusal to claim the certified mail.

Comment. The ATPE commented that §249.35(c) allows the SBEC to make certain legal determinations, such as whether a case should be dismissed because of *res judicata* or a lack of jurisdiction, and that the SBEC should only be allowed to take such an action if this is supported by a proposal for decision from an ALJ. The ATPE recommended that language be restored that states "if supported by an ALJ's proposal for decision."

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The ALJ is the fact finder, but the SBEC has the authority to make legal conclusions. Since the SBEC has the ultimate authority to make decisions on legal issues such as *res judicata* and jurisdiction, the SBEC may issue such rulings without first referring the matter to the SOAH. Such procedure may be appropriate in some cases.

Comment. The TSTA commented that the proposed rule revision to §249.35(d) is unfair. The proposed rule revision makes the record in a hearing held pursuant to the TEC, Chapter 21, Subchapter D, admissible in an SBEC hearing. The TSTA argues that evidence that may be relevant in one proceeding may not be relevant in another proceeding. The TSTA also argues that evidence in any Chapter 21 proceeding may have been improperly admitted.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. Section 249.35(d) only provides for the consideration of the sworn testimony and evidence admitted at the Chapter 21 hearing, as well as the findings made by the judge in that proceeding. However, the previous findings are not conclusive, and the ALJ is only required to consider the evidence previously admitted in the Chapter 21 hearing and is not required to give that evidence any weight.

Comment. The ATPE commented that §249.35(e)(1) would allow the SBEC to issue a default when the TEA staff fails to file an answer. The ATPE recommended that the word "respondent" be replaced with "certificate holder."

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. In all instances where a default is proposed, that decision is discretionary with the SBEC. The defaulting party has the ability to show cause for the failure to file an answer under new §249.35(f).

Comment. The TSTA commented on the provision in §249.36(e) which allows the SBEC's general counsel to issue procedural directives relating to matters that arise after the submission of the proposal for decision if the matter is not delegated to the SOAH for action or decision. The TSTA argues that the term "procedural directives" is not clearly defined and that the role of the SBEC's general counsel and the TEA staff attorneys is unclear.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The term "procedural directives" is clear and does not need further definition. The SBEC has jurisdiction to consider a proposals for

decisions and exceptions to the proposals for decision. The parties may make reasonable requests to accommodate their ability to present their arguments at the appropriate SBEC meeting. It is proper for the SBEC's general counsel to issue such procedural directives. In such a case, the rules regarding ex parte contact would apply and each party would be required to notify the other party of any contact with the SBEC's general counsel.

Comment. The TSTA commented that the provision in §249.37(d)(5) cites the incorrect standard of review.

Board Response. The SBEC agreed and took action to adopt, subject to SBOE review, the rule with changes since published as proposed to change "substantial evidence" to "the preponderance of the evidence."

Comment. The TSTA commented that §249.40(d) is costly to educators and unfair. Section 249.40(d) imposes the cost of preparing the transcript on the party that is appealing the decision of the SBEC.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The Texas Administrative Procedure Act specifically authorizes this rule.

Comment. The ATPE commented that §249.43 relating to the procedure for reinstating a suspended certificate does not have a time limit for the TEA staff to act. The ATPE suggested that the SBEC adopt a 60-day time limit for the TEA staff to act on a request for reinstatement.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The current rule does not provide a time limit for the TEA staff to act on a request for reinstatement. Such a time limit could create a situation where the SBEC may have to reinstate a certificate of an educator who committed a criminal act or an act of misconduct while the educator's certificate was suspended. The SBEC decided that this posed an unacceptable risk to Texas schoolchildren.

Comment. The TSTA and Texas AFT commented that the proposed change to §249.44(b), which extends the reapplication period following the denial of an application or the revocation of a certificate from one year to five years, is too long of a time period. The proposed change requires any person whose application has been denied or whose certificate has been revoked or surrendered to wait five years before applying for a certificate. The TSTA and the Texas AFT suggested that the original one-year time limit be restored or, as suggested by the Texas AFT, the time limit be set at two years, rather than five years.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. When a person has had his or her application denied or when an educator has had his or her certificate revoked or surrendered, that individual should be required to wait a substantial period of time before he or she may request a new certificate. The current rule specifies a one-year period that the applicant or former certificate holder must wait before he or she may reapply; this results in reapplication soon after the original action is taken, and in some cases appeals may still be pending. Such a short turnaround does not allow the SBEC to examine a sufficiently lengthy period of time to consider whether the person has truly been rehabilitated from the misconduct that was the basis of the original action.

Comment. The ATPE commented that §249.44(c) allows the SBEC to permanently deny an application for certification, and that this permanent denial violates due process because the applicant would not be able to appeal the denial of subsequent applications.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The applicant is given an opportunity for a contested case hearing when the application for certification is denied. Therefore, the applicant receives due process.

Comment. The TCTA and the TSTA commented that §249.45, relating to factors for modifying sanctions, should not be repealed. The TCTA contends that the modification of sanctions can be a valuable tool when an educator has defaulted, but is later able to provide evidence that may justify the imposition of a lesser sanction. The TCTA also contends that the possibility of future modification is a useful tool when negotiating agreed dispositions. The TCTA recommended that the SBEC review the issue of sanction modification and direct staff to solicit stakeholder input on the issue. The TSTA contends that the current modification procedure is equitable when the educator has only committed a minor violation and time has passed.

Board Response. The SBEC disagreed and took action to adopt, subject to SBOE review, the rule as published as proposed. The TEA staff attempts to notify educators before a default order is issued by sending notice to the educator at the address the educator is required to provide to the SBEC pursuant to §230.431(c), as well as any other address known to the TEA staff at the time that the notice is sent. In this situation, the educator has been provided ample opportunity to defend against the allegations and should not have a later opportunity to re-argue the case.

The possibility of future modification of a sanction is not necessary to settle contested matters. Instead of allowing for a possible future modification, the TEA staff can use other tools to settle difficult cases, such as a probated suspension or a revocation that is not permanent.

In cases where the educator committed a minor violation, the SBEC has the authority to issue a non-inscribed reprimand at the time that the order is entered or agreed to.

Comment. The ATPE commented that they cautiously support the proposed elimination of Chapter 249, Subchapter F, Enforcement of the Educator's Code of Ethics, which currently prescribes procedures for enforcing the Educator's Code of Ethics.

Board Response. The SBEC agreed and took action to adopt, subject to SBOE review, the rule as published as proposed.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §249.1

The repeal is adopted under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own

procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The adopted repeal implements the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Associate Commissioner, Educator Quality and Standards, Texas Education Agency

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For further information, please call: (512) 475-1497



19 TAC §§249.3 - 249.7, 249.9, 249.10

The amendments are adopted under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective

Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The adopted amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §§249.11 - 249.15, 249.17

The amendments are adopted under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose

rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The adopted amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.13. *Cancellation of an Erroneously Issued Certificate.*

(a) When satisfactory evidence indicates that a certificate was issued in error and the person issued the certificate has not fulfilled all certification requirements, the Texas Education Agency (TEA) staff shall cancel the certificate by updating the person's virtual certificate. Before canceling the certificate, the TEA staff shall notify the person issued the certificate that the TEA intends to cancel the certificate and shall provide the person issued the certificate at least ten calendar days to respond and show cause why the certificate should not be cancelled.

(b) The TEA staff shall notify the person and the person's employing school district, if any, that the person was issued a certificate in error, what actions the TEA staff have taken to cancel the erroneously issued certificate, and how the person can be issued a valid certificate.

(c) The TEA staff will issue the person a valid certificate when it receives satisfactory evidence that all certification requirements have been fulfilled. The person whose erroneously issued certificate has been cancelled may request a contested case hearing before the State Office of Administrative Hearings. The person whose certificate has been cancelled shall be deemed to have had their original application for the erroneously issued certificate administratively denied.

§249.17. Decision-Making Guidelines.

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with the Texas Education Code (TEC), the rest of this chapter, and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

- (1) the seriousness of the violation;
- (2) whether the misconduct was premeditated or intentional;
- (3) attempted concealment of misconduct;
- (4) prior misconduct;
- (5) whether the sanction will deter future violations; and
- (6) any other relevant circumstances or facts.

(d) Permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing, it is determined that the educator or applicant:

(1) engaged in or solicited any sexual contact or romantic relationship with a student or minor as defined in §249.14(m) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition);

(2) possessed or distributed child pornography;

(3) was registered as a sex offender;

(4) committed criminal homicide;

(5) possessed without a prescription, transferred, sold, distributed, or conspired to possess without a prescription, transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481, on school property; or

(6) committed any offense described in the TEC, §21.058.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PREHEARING MATTERS

19 TAC §§249.18 - 249.29

The amendments are adopted under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate;

and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The adopted amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

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SUBCHAPTER D. HEARING PROCEDURES

19 TAC §§249.30 - 249.33, 249.35

The amendments are adopted under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of

misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The adopted amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

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SUBCHAPTER E. POSTHEARING MATTERS

19 TAC §§249.36 - 249.44

The amendments are adopted under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas

Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The adopted amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.37. *Exceptions and Replies.*

(a) A party who is aggrieved by the proposal for decision of the administrative law judge (ALJ) or the Texas Education Agency (TEA) staff shall file any exceptions to the proposal for decision within 30 calendar days of the date of the proposal for decision. Any replies to the exceptions shall be filed by other parties within 50 calendar days of the proposal for decision. Exceptions and replies shall be:

(1) filed with the State Board for Educator Certification (SBEC) by mailing, hand-delivering, or faxing them to the SBEC's general counsel;

(2) served upon the other party by mail, hand-delivery, or fax; and

(3) served on the ALJ in accordance with 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures).

(b) Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.

(c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.

(1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.

(3) Arguments shall be logical and coherent and citations to authorities shall be complete.

(d) Exceptions to the proposal for decision may be based on the following:

- (1) the ALJ has made an incorrect conclusion of law;
- (2) the ALJ has failed to make an essential fact finding;
- (3) the ALJ applied the incorrect burden or standard of proof;
- (4) the findings of fact do not support the conclusions of law; or
- (5) the ALJ has made a finding of fact that is not supported by the preponderance of the evidence.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Raymond Glynn

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19 TAC §249.45

The repeal is adopted under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons

convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The adopted repeal implements the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

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SUBCHAPTER F. ENFORCEMENT OF THE EDUCATOR'S CODE OF ETHICS

19 TAC §§249.46 - 249.56

The repeals are adopted under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification

and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The adopted repeals implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §97.62

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts an amendment to §97.62 concerning the provision of exclusions from compliance with required immunizations without changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5967) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption every four years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Section 97.62 has been reviewed and the department has determined that reasons for adopting amend-

ments to §97.62 continue to exist because a rule on this subject is needed.

Texas Health and Safety Code, §161.004(d)(1), states that: "A child is exempt from an immunization required by this section if...a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief." Under the statute, the appropriate form is obtained from the department. Previously under this rule, a person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization could only obtain the affidavit form by submitting a written request to the department via mail delivery, hand delivery, or by facsimile. Under this amendment, there is now a provision in the rule to authorize requesting the form via the Internet.

The amendment allows the form to be requested via the Internet. This change reflects the fact that more and more people are conducting routine business through the Internet. Allowing parents to submit a request for a conscientious objection affidavit form via the department's Internet website adds convenience for the public and would improve the process' efficiency.

The amendments also clarify that references to a child's guardian in this rule mean a child's "legal" guardian.

SECTION-BY-SECTION SUMMARY

Amendments to §97.62 update department organizational names and mailing addresses, reorder the text, allow parents or legal guardians to request conscientious objection affidavit forms for their children via the department's Internet website, insert the parenthetical "(where applicable)" to §97.62(2)(D) to reflect the fact that there is no physical "request" to return when the Internet request method is used; would clarify that all references in the rule to a child's "guardian" mean a child's "legal guardian."

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenters were the following entities: Harris County Public Health and Environmental Services, Paris Junior College, and Trinity Valley Community College.

Comment: Concerning the rule in general, two commenters listed support for the proposed rule.

Response: The commission agrees with the commenters. No changes were made to the rule text as a result of the comments.

Comment: Harris County Public Health and Environmental Services opposes the rule change, and instead seeks *additional* requirements placed on those persons seeking to exempt a child from immunization requirements for "reasons of conscience, including a religious belief" under Texas law.

Response: The department is bound by Texas Health and Safety Code, §161.004(d)(1), which states "A child is exempt from an immunization required by this section if...a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief."

The department is also bound by Texas Health and Safety Code, §161.0041, which states that a person claiming an exemption for a child under Texas Health and Safety Code, §161.004(d)(1) must complete an affidavit on a department form "stating the rea-

son for the exemption"; that a person submits a "written" request for the affidavit form to the department; the form must "contain a statement" that the person signing the form "understands the benefits and risks of immunizations and the benefits and risks of not being immunized;" and that the form must be signed by "the person claiming the exemption or, if the person is a minor, a person's parent, managing conservator, or guardian, and the affidavit must be notarized."

From these two statutory sections, it is clear that the Texas Legislature wishes to allow an exemption from immunization requirements for "reasons of conscience, including a religious belief," and that the Legislature has provided a limitation on the requirements a person must go through in order to request, fill out and submit the affidavit form.

It appears that the actual objection of the commenter is to the availability of the exemption itself under Texas Health and Safety Code, §161.004(d)(1). While the department shares the commenter's desire to improve vaccination rates for Texas children, the Legislature's mandate in this matter is clear. By law, this particular exemption exists. Under the statutory provisions at issue, the department is required to make the exemption affidavit form available under the procedure described in the statute. Requesting the form via the Internet constitutes a "written" request, as described in §161.0041(c), and the commenter does not argue otherwise. The statute does not provide any additional condition(s) in order to obtain the blank affidavit form, and the department interprets this to prohibit the department from adding additional requirements. The commenter seems to be arguing, in part, that the method for obtaining the blank form used to seek an exemption is related to how informed the requestor is regarding the decision to seek the exemption itself. The commission does not agree with this proposition. Requesting the form is an administrative task, and there is no compelling reason to make such a task more difficult for the public than it has to be. All levels of government in Texas have, for years, been moving toward making forms available to the public via the Internet, and this rule change is entirely in line with such efforts.

The remainder of the commenter's suggestions concerns the contents of the affidavit form itself, and the way it should be filled out. Legally, the form itself is not part of §97.62, and therefore its contents are not up for public comment. The department does not include all forms in the body of the rules themselves. The department sees no compelling reason to do so in this instance. There is no provision in the statute requires the department to put this form into the text of this rule.

Beyond that point, the department notes that the Texas Health and Safety Code, §161.0041(a), (b) and (d) contain the only statutory requirements for the form's contents and how it is filled out. The department interprets this to prohibit the department from adding additional substantive requirements.

Texas Health and Safety Code, §161.0041(a) only requires the requestor, in order to seek the exemption, to "...complete an affidavit on a form provided by the department stating the reason for the exemption." Currently, the department form includes a checklist of vaccines from which the requestor may choose. The commenter suggests that the checklist be removed, and replaced with "blank lines on which parents/guardians are directed to list the vaccine(s) for which they are seeking exclusion." The department does not see this to be a workable or desirable approach. Requestors of the exemption will almost exclusively be laymen who will not know the proper medical terminology for articulating the vaccines they want to list. This will create an incredi-

bly wide variety of responses for schools to evaluate, a labor-intensive task that would tax our already resource-strained educational system. Beyond the time burden, this approach would also present the very real danger of schools guessing wrong in their attempt to decipher the requestor's description of the vaccines. This could lead to unintended consequences regarding what vaccines are actually administered to the children in question. It may be that the intent of the commenter is to induce the requestor to seek medical consultation before filling out the form. However advisable that may be from a medical standpoint, it would impose via the "backdoor" a requirement that the Legislature has chosen not to include in the statute (also see response to commenter's next point).

The commenter next makes an overt suggestion that the blank affidavit form require the requestor to certify "on oath" that the requestor "has spoken to a physician, physician's assistant, nurse practitioner or registered nurse licensed in the State of Texas about the benefits of immunizations and the risks of not being immunized." Again, as medically advisable as such a requirement might be, the department must return to the wording of the statute. Section 161.0041(a), (b) and (d) constitute an exclusive list of the requirements for the form's contents. Subsection (b) says the form must be properly signed and notarized. Subsection (d) says the form must "...contain a statement indicating that the person...understand the benefits and risks of immunizations and the benefits and risks of not being immunized." Pursuant to these subsections, the department form has an appropriate signature line, space for notarizing the form, and also includes the statement required under Subsection (d). Because the department interprets these statutory provisions to constitute the exclusive list of requirements related to the form's contents, the department is not at liberty to add an additional requirement regarding any mandatory consultations of health care professionals. The department points out, however, that the required statement in Subsection (d) seems designed by the Legislature to induce the requestor to consider the benefits and risks of making the request, and this may well lead to the requestor seeking medical consultation prior to making a final decision regarding the exemption.

For all the reasons stated above, the commission disagrees and declines to make the changes suggested by this commenter.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

Section 97.62 is authorized by Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; §81.004 which allows the department to adopt rules for the effective administration of the Communicable Disease Act; §§161.004 and 161.0041 which provides for the exemption and the methodology for obtaining it; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the section implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

SUBCHAPTER A. TEXAS HIV STATE PHARMACY ASSISTANCE PROGRAM

25 TAC §§98.1 - 98.13

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts new §§98.1 - 98.13 concerning the Texas HIV State Pharmacy Assistance Program (SPAP) without changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5969) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The SPAP is designed to assist low income, HIV-positive Texans, who are Medicare Part D beneficiaries and have been denied Medicare's full low-income subsidy towards out-of-pocket expenses related to prescription drugs. On January 1, 2006, the Medicare Modernization Act of 2003 implemented prescription drug coverage for Medicare beneficiaries. Beneficiaries with incomes of 135% of the Federal Poverty level or less were awarded full low income subsidies that provided assistance with Medicare Part D Premiums and all out-of-pocket costs except for \$3 - \$5 dispensing fees per prescription. Average out-of-pocket costs for beneficiaries who were denied the full low-income subsidies averaged \$4,000 - \$6,000 per year. Many of these patients found these out-of-pocket costs impossible to pay and consequently began to stop taking their medications. Many of these clients are receiving assistance with some of their medications from the Texas HIV Medication Program (THMP). THMP's formulary is limited and only consists of 43 medications. The THMP receives federal AIDS Drug Assistance money. As a result of this, the assistance that the THMP currently provides does not count toward meeting the client's true out-of-pocket costs and therefore the client does not advance to the Medicare catastrophic coverage portion of the benefit and does not reap any savings. Additionally, the THMP does not reap savings as a result of the client not advancing to the catastrophic coverage benefit.

The department carefully considered the most efficient way to wrap around the Medicare Part D prescription drug benefit for low income, HIV-positive Texans that would maximize the use of existing funds, expand buying power and reduce out-of-pocket

costs for clients. The department believes these rules will best serve those purposes.

SECTION-BY-SECTION SUMMARY

New §98.1 provides the purpose of the SPAP; new §98.2 provides definitions for the new subchapter; new §98.3 limits assistance with out-of-pocket costs only associated with the Medicare Prescription drug plan that a client is currently enrolled in; new §98.4 describes the program's nondiscrimination policy; new §98.5 describes the program's eligibility criteria and renewal requirements; new §98.6 covers denial, non-renewal, and termination of benefits; new §98.7 describes the process to apply for services; new §98.8 describes the application submission process; new §98.9 describes residency, and residency documentation, requirements; new §98.10 describes the program's benefits and limitations to those benefits; new §98.11 concerns department contracting; new §98.12 describes the program's appeal process; and new §98.13 concerns confidentiality.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comments received regarding the proposed rules during the comment period and the commission has reviewed and accepts. The commenters were two individuals in support of the new program rules.

Comment: Concerning the rules in general, all commenters listed support for the proposed rules.

Response: The commission agrees with the commenters. No changes were made to the rule text as a result of the comments.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §85.003, which requires the department to act as lead agency and primary resource for AIDS and HIV policy; Health and Safety Code, §85.013, which requires the department to maximize the use of federal and private funds for HIV-related treatment; Health and Safety Code, §85.016, which allows for the adoption of rules; Health and Safety Code, §85.061, which establishes the Texas HIV Medication Program; Health and Safety Code, §85.063, which requires the department to establish procedures and eligibility guidelines for the HIV Medication Program; Health and Safety Code, §85.064, which allows the department to accept and use local, state, and federal funds and private donations to fund the program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez

General Counsel

Department of State Health Services

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SUBCHAPTER C. TEXAS HIV MEDICATION PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§98.101 - 98.115, §§98.117 - 98.119 and §98.121, concerning the Texas HIV Medication Program, without changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5973), and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments update, clarify, and improve the efficiency and accountability of the Texas HIV Medication Program, which was established under Texas Health and Safety Code, Title II, Chapter 85, Subchapter C.

Also, Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency every four years, pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 98.101 - 98.115, 98.117 - 98.119 and §98.121 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. The adopted changes improve the efficiency and accountability of the program, as well as improve the clarity and readability of the rules themselves.

SECTION-BY-SECTION SUMMARY

Amendments to §98.101 overtly state that HIV-infected individuals may directly request assistance; changes to this section also clarify that the medications which can be requested are based on the program formulary (created under the authority of Texas Health and Safety Code, §85.061) and, for clarity, delete a redundant reference to the Health and Safety Code.

Amendments to §98.102 revise text for clarity, update legacy agency references, delete the definitions for "services" and "client," and add a definition for "recipient" to more accurately reflect the relationship between the agency and the individual, clarify the definition of a "Texas resident", and identify the Centers for Disease Control and Prevention as a federal agency.

Amendments to §98.103 update legacy agency references and the Internet address for the program's website.

Amendments to §98.104 revise text to describe covered classes in the most legally appropriate manner.

Amendments to §98.105 and §98.106 revise text as necessary for clarity.

Amendments to §98.107 update legacy agency references, improve readability, and facilitate portability within the limits of Texas' eligibility requirements.

Amendments to §98.108 revise text to clarify the list of documents the applicant could provide to verify Texas residency, and also delete paragraphs (3) and (4), since that subject matter is covered by the new §98.110(a)(1)(A) and (f).

Amendments to §98.109 clarify the formula for adjusting annual gross income consistent with federal grant conditions regarding frequency of eligibility verifications; and also change references from "client" to "recipient."

Amendments to §98.110 update the section title to reflect new content; add a new subsection (a) to establish what constitutes a complete application, and a new subsection (b) to state how incomplete applications will be handled; update legacy agency references; and correct the website address for accessing a program application. Further changes in this section, designed to increase accountability, expressly state that the program may at any time require a recipient to verify eligibility status, and also require renewal every three years.

Amendments to §98.111 clarify the program's disclosure of confidential information to be only as allowed by law; clarify terms by replacing "client" with "applicant" or "recipient;" update legacy agency references, and correct the website address for accessing HIPAA information.

Amendments to §98.112 update legacy agency references, and add a reference to Medicare on the list of third party payors, because, as of January 1, 2006, federal Medicare insurance implemented prescription drug coverage; and clarify terms by replacing "clients" with "recipients."

Amendments to §98.113 revise the rule title for clarity.

Amendments to §98.114 revise text to clarify how prescription fees are paid for Medicaid clients.

Amendments to §98.115(a) clarify how the program calculates costs and revenue, while changes to §98.115(b) provide that the analysis of program expenditures be changed to a quarterly, as opposed to a monthly, basis to better allow cost trends to manifest themselves. Changes to §98.115(c) delete unnecessary language and add a website reference. The amendment to §98.115(d) clarifies terms by replacing "clients" with "recipients."

Amendments to §98.117 update the title to include non-renewal; help ensure accountability in the eligibility process by making sure only those clients who are truly eligible receive program benefits; also, prevent double-dipping by incarcerated patients who are already receiving that care; and clarify terms by replacing "client" with "applicant" or "recipient".

Amendments to §98.118 update legacy agency references and legacy agency positions; and clarify language regarding appeals by fully outlining who can appeal, all steps in the process and the limitations to the appeal process. Additionally, the amendments delete language regarding open records since the Public Information Act itself, in conjunction with statutory confidentiality provisions, will determine whether documents associated with an individual appeal are subject to disclosure.

Amendments to §98.119 clarify terms by replacing "client" with "recipient" and revise text for clarity.

Amendments to §98.121 update legacy references; delineate responsibilities within the advisory board between the Commissioner of the department and the Executive Commissioner of the Health and Human Services Commission upon dissolution of the Board of Health; revise text for clarity; delete timeframes for approval of meeting minutes; delete term limitations for presiding

officer and assistant presiding officer; simplify language prohibiting compensatory per diem and simplify language to clarify which committee members are eligible for travel reimbursement.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

DIVISION 1. GENERAL PROVISIONS

25 TAC §§98.101 - 98.115, 98.117 - 98.119

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, Chapter 85, which requires the department to implement the HIV Medications Program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel

Department of State Health Services

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DIVISION 2. ADVISORY COMMITTEE

25 TAC §98.121

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, Chapter 85, which requires the department to implement the HIV Medications Program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 103. INJURY PREVENTION AND CONTROL

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§103.1 - 103.24, and new §§103.1 - 103.8, concerning injury prevention and control without changes to the proposed rule text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5981) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeal and new sections are necessary to comply with Health and Safety Code, Chapter 92. The repeal and new sections enable the reporting sources to more clearly identify the timeframes and conditions that must be reported, define the minimal reportable information on these conditions, and describe the procedures for reporting. The new sections also add language necessary to administer other provisions of this subchapter; specifically, the investigation and control of reportable conditions.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 103.1 - 103.24 have been reviewed and the department has determined that reasons for adopting the sections continue to exist and, therefore, rules on this subject are necessary.

SECTION-BY-SECTION SUMMARY

Sections 103.1 - 103.9 are repealed because the rules expired on December 31, 2001. Sections 103.10 - 103.24 are repealed and rewritten in a clearer, more organized manner.

New §103.1 has been renamed and rewritten to include potential activities, which the department may undertake. It also updates legacy agency references. New §103.2 updates legacy agency references, removes definitions that are no longer applicable, clarifies existing definitions, and adds definitions previously defined in rule language. New §103.3 has been renamed and rewritten to include language regarding confidentiality of records and release of data. It also updates legacy agency references and clarifies existing language. New §103.4 has been renamed and rewritten to encompass language in both repealed §103.12 and §103.13. It lists those that are required to report, reportable conditions, and responsibilities of a local or regional health authority. New §§103.5 - 103.8 have been renamed and renumbered to include timeframes, minimal reportable information on conditions, procedures for reporting, and the provisions for third party services. New §103.5 addresses these issues with refer-

ence to emergency medical service providers; new §103.6 with reference to physicians, medical examiners, and justices of the peace; new §103.7 with reference to hospitals; and new §103.8 with reference to acute and post-acute facilities.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§103.1 - 103.24

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §92.002(a), Injury Prevention and Control Act, which authorizes the department to require the reporting of spinal cord injuries, traumatic brain injuries, and submersion injuries; §92.002(b) which authorizes the department to require the reporting of other possible injuries; §92.002(c) which authorizes the department to maintain and revise a list of reportable injuries; §92.002(d) which authorizes the department to adopt rules as necessary to administer this subchapter; §92.003(a) which authorizes the department to name persons required to report injuries; §92.003(c) which authorizes the department to require any information deemed necessary for the administration of the subchapter; Health and Safety Code, §773.112, which authorizes the department to adopt rules establishing requirements for data collection, including trauma incidence reporting; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



25 TAC §§103.1 - 103.8

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §92.002(a), Injury Prevention and Control Act, which authorizes the department to require the reporting of spinal cord injuries,

traumatic brain injuries, and submersion injuries; §92.002(b) which authorizes the department to require the reporting of other possible injuries; §92.002(c) which authorizes the department to maintain and revise a list of reportable injuries; §92.002(d) which authorizes the department to adopt rules as necessary to administer this subchapter; §92.003(a) which authorizes the department to name persons required to report injuries; §92.003(c) which authorizes the department to require any information deemed necessary for the administration of the subchapter; Health and Safety Code, §773.112, which authorizes the department to adopt rules establishing requirements for data collection, including trauma incidence reporting; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez

General Counsel

Department of State Health Services

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CHAPTER 123. RESPIRATORY CARE PRACTITIONER CERTIFICATION

25 TAC §§123.1 - 123.16

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§123.1 - 123.16, concerning the regulation and certification of respiratory care practitioners, without changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5985) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeals are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC, Chapter 140, Health Professions Regulation. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. One change affects continuing education. In response to stakeholder input, licensees will be able to take more continuing education hours through self-directed study (including Internet based courses). The current rules allow up to six hours each renewal period; the new rules will permit up to 12 of the required 24 hours to be taken as self-directed study.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that

agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 123.1 - 123.16 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department is repealing the existing sections and readopting the rules in 25 TAC, Chapter 140, Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

The repeal of §§123.1 - 123.16 is necessary to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC, Chapter 140, Health Professions Regulation.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are adopted under Occupations Code, §604.052, which authorizes the adoption of rules for the regulation of respiratory care practitioners; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel

Department of State Health Services

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CHAPTER 140. HEALTH PROFESSIONS REGULATION

SUBCHAPTER E. RESPIRATORY CARE

25 TAC §§140.201 - 140.216

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§140.201 - 140.216, concerning the regulation and certification of respiratory care practitioners, without changes to the proposed text as published in the September 7, 2007, issue of the *Texas Register*

(32 TexReg 6008) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC, Chapter 140, Health Professions Regulation. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. One change affects continuing education. In response to stakeholder input, licensees will be able to take more continuing education hours through self-directed study (including Internet based courses). The current rules allow up to six hours each renewal period; the new rules will permit up to 12 of the required 24 hours to be taken as self-directed study.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 123.1 - 123.16 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, the department is repealing the existing sections and readopting the rules in 25 TAC, Chapter 140, Health Professions Regulation.

SECTION-BY-SECTION SUMMARY

New §140.201 sets forth purpose and scope of the rules. New §140.202 includes definitions for terms used within the rules. New §140.203 covers the membership and operations of the advisory committee. New §140.204 lists the fees required for application, registration, upgrade, renewal, and issuance of a duplicate certificate. New §140.205 cover exemptions from certification as a respiratory care practitioner, including the definition of a student. New §140.206 describes the procedures and criteria for approval or disapproval of an application by the department. New §140.207 explains the types of certificates and temporary permits and applicant eligibility for respiratory care practitioners. New §140.208 sets forth information concerning the procedures for examination eligibility for respiratory care practitioners. New §140.209 provides timelines for the processing of renewal and late renewal applications, and sets forth the requirements for inactive status, the provision of renewal for voluntary charity care and military status. New §140.210 sets forth continuing education requirements, including self-directed study hours and increases the acceptable hours of Internet-based or computer-based studies from six to twelve hours during each renewal period. New §140.211 covers procedures for changes of name and address. New §140.212 establishes professional and ethical standards for respiratory care practitioners. New §140.213 concerns certifying or permitting persons with criminal backgrounds. New §140.214 sets out violations and prohibited actions, procedures concerning complaints, and actions the department may take against a person when violations have occurred. New §140.215 covers the informal disposition of any complaint or contested case. New §140.216 explains suspension of a license relating to child support and child custody.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new rules are adopted under Occupations Code, §604.052, which authorizes the adoption of rules for the regulation of respiratory care practitioners; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez

General Counsel

Department of State Health Services

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §§57.1 - 57.4, 57.6 - 57.11, 57.13 - 57.15, 57.18 - 57.20, 57.22 - 57.30, 57.32 - 57.36, 57.40 - 57.42, 57.44, 57.46, 57.48 - 57.57

The Automobile Burglary and Theft Prevention Authority (ABTPA) adopts amendments to Chapter 57, §§57.1 - 57.4, 57.6 - 57.11, 57.13 - 57.15, 57.18 - 57.20, 57.22 - 57.30, 57.32 - 57.36, 57.40 - 57.42, 57.44, 57.46, and 57.48 - 57.57, without changes to the proposed text as published in the September 28, 2007, issue of the *Texas Register* (32 TexReg 6771). The text of the rules will not be republished.

These amendments are adopted in conjunction with its review of this chapter pursuant to Texas Government Code, §2001.039. See ABTPA's proposed rule review, published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2377). The ABTPA has reviewed this chapter and determined that the reasons for this chapter continue to exist. Additionally, it is adopting amendments to certain sections for clarity and consistency as well as to update the rules to conform to current policy and practice. The 80th Legislature passed House Bill (HB) 1887, which added the prevention and investigation of burglary of motor vehicles to the ABTPA's mission and amendments are adopted

to reflect this expanded mission. HB 1887 also changes the names of the "Automobile Theft Prevention Authority" to become the "Automobile Burglary and Theft Prevention Authority," or ABTPA, and Chapter 57 is amended to reflect this change in name. Other amendments are adopted to update Chapter 57 as a result of changes from the passage of HB 3225, also enacted this past legislative session. HB 3225 changes the ABTPA statute to replace the word "automobile" with a broader term "motor vehicle" throughout the statute. These legislative changes were made so that reporting of grant activities would be consistent with the Uniform Crime Report and to provide more flexibility to law enforcement agents in preventing motor vehicle and burglary theft in Texas.

No written comments on the proposed amendments were received.

The amendments are adopted under Texas Civil Statutes, Article 4413(37), §6(a). The ABTPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties.

No other codes, articles, or statutes are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 20, 2007.

TRD-200705741

Susan Sampson

Director

Automobile Burglary and Theft Prevention Authority

Effective date: December 10, 2007

Proposal publication date: September 28, 2007

For further information, please call: (512) 374-5101

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REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 7, concerning Private and Out-of-State Public Postsecondary Educational Institutions Operating in Texas. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200705838

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 26, 2007



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 8, concerning Creation, Expansion, Dis-solution, or Conservatorship of Public Community College Districts. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200705839

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 26, 2007



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 9, concerning Program Development in Public Two-Year Colleges. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200705840

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 26, 2007



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 10, concerning Institutional Effectiveness in Public Two-Year Colleges. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200705841

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 26, 2007



The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 11, concerning Technical College System. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200705842

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 26, 2007

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The Texas Higher Education Coordinating Board files this notice of intention to review Chapter 12, concerning Career Schools and Colleges. This review is in accordance with the requirements of the Texas Government Code, §2001.039.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed review may be submitted to Raymund A. Paredes, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711.

TRD-200705843

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: November 26, 2007

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State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning December 2007, will review and consider for readoption, revision, or repeal Chapters 109, Transactions Exempt from Registration; 111, Securities Exempt from Registration; and 139, Exemptions by Rule or Order, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-200705866

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Filed: November 27, 2007

Adopted Rule Reviews

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Pursuant to the notice of proposed rule review published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 4015), the Texas Department of Insurance, Division of Workers' Compensation has reviewed

and considered for readoption, revision or repeal all sections as they existed on June 29, 2007, of the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 110, Required Notices of Coverage and Chapter 124, Carriers: Required Notices and Mode of Payment.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapters 110 and 124. The completion of the review of these chapters concludes the rule review process.

TRD-200705878

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: November 27, 2007

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Pursuant to the notice of proposed rule review published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4243), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on July 6, 2007, of the following chapters of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 130, Impairment and Supplemental Income Benefits; Chapter 131, Lifetime Income Benefits and Chapter 132, Death Benefits--Death and Burial Benefits.

The Department considered, among other things, whether the reasons for adoption of these rules continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for adopting the remaining sections continue to exist and those sections are retained in their present form. However, other sections that were reviewed may be subsequently revised in accordance with the Department's internal procedures. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapters 130, 131 and 132. The completion of the review of these chapters concludes the rule review process.

TRD-200705879

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: November 27, 2007

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Pursuant to the notice of proposed rule review published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 4015), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on June 29, 2007, of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 164, Hazardous Employer Program.

The Department considered, among other things, whether the reasons for not adopting this rule continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for not adopting the remaining sections continue to exist and those sections are retained in their present form. The rules in this Chapter will be presented at a later date for repeal. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 164. The completion of the review of this chapter concludes the rule review process.

TRD-200705880

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: November 27, 2007



Pursuant to the notice of proposed rule review published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4783), the Texas Department of Insurance, Division of Workers' Compensation has reviewed and considered for readoption, revision or repeal all sections as they existed on August 3, 2007, of the following chapter of Title

28, Part 2 of the Texas Administrative Code, in accordance with Texas Government Code §2001.039: Chapter 164, Hazardous Employer Program, §164.4, Formulation of Accident Prevention Plan for Public Employers.

The Department considered, among other things, whether the reasons for not adopting this rule continue to exist. The Department received no written comments regarding the review of its rules.

The Department has determined that the reasons for not adopting the remaining sections continue to exist and those sections are retained in their present form. The rules in this Chapter will be presented at a later date for repeal. Any such revisions will be accomplished in accordance with the Texas Administrative Procedure Act.

This concludes the Department's review of Chapter 164. The completion of the review of this chapter concludes the rule review process.

TRD-200705881

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: November 27, 2007



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §81.116(a)

The formula for estimating turnout for the 2008 primary elections is:

$$A \times B + C = D$$

Where: A = the percentage of voter turnout for governor or another statewide race in the 2004 party primary (percentage is the sum of all votes cast for all candidates for governor or other statewide office in the 2004 primary divided by the number of registered voters).
B = the number of registered voters as of October 2007.
C = 25% of the number resulting when you multiply A x B.
D = Preliminary Estimated 2008 Turnout.

Figure 1: 16 TAC Chapter 8--Preamble

Total cost for creating a risk model for scheduling leakage survey frequency	Cost per Employee for			
	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
\$500	\$500	\$100	\$10	\$0.50
\$1,500	\$1,500	\$300	\$30	\$1.50
\$3,500	\$3,500	\$700	\$70	\$3.50
\$5,000	\$5,000	\$1,000	\$100	\$5

Figure 2: 16 TAC Chapter 8--Preamble

	Cost per Employee for			
For a system of this size on which there are no leaks	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
20 miles	\$400	\$80	\$8	\$0.40
50 miles	\$1,000	\$200	\$20	\$1
1,000 miles	\$20,000	\$4,000	\$400	\$20
10,000 miles	\$200,000	\$40,000	\$4,000	\$200

Figure 3: 16 TAC Chapter 8--Preamble

	Cost per Employee for			
For a system of this size on which there are no leaks	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
20 miles	\$1,350	\$270	\$27	\$1.35
50 miles	\$3,375	\$675	\$67.50	\$3.38
1,000 miles	\$67,500	\$1,350	\$1,350	\$67.50
10,000 miles	\$675,000	\$135,000	\$13,500	\$675

Figure 4: 16 TAC Chapter 8--Preamble

	Cost per Employee for			
For a system on which there are this many more leaks repaired annually, at \$50 each	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
5	\$250	\$50	\$5	\$0.25
100	\$5,000	\$1,000	\$100	\$5
500	\$25,000	\$5,000	\$500	\$25
3,000	\$150,000	\$30,000	\$3,000	\$150

Figure 5: 16 TAC Chapter 8--Preamble

For a system on which there are this many service riser installations that must be replaced	Cost per Employee for			
	Sole Proprietorship (1 employee)	Micro-Business (5 employees)	Small Business (50 employees)	Large Business (1,000 employees)
10	\$3,000-\$4,500	\$600-\$900	\$60-\$90	\$3-\$4.50
250	\$75,000-\$112,500	\$15,000-\$22,500	\$1,500-\$2,250	\$75-\$112.50
10,000	\$3,000,000-\$4,500,00	\$600,000-\$900,000	\$60,000-\$90,000	\$3,000-\$4,500
95,000	\$28,500,000-\$42,750,000	\$5,700,000-\$8,550,000	\$570,000-\$855,000	\$28,500-\$42,750

Figure: 16 TAC §8.207(g)

GRADE	DEFINITION	ACTION CRITERIA	EXAMPLES
1	A leak that represents an existing or probable hazard to persons or property, and requires immediate repair.	<p>Requires immediate repair. Requires prompt action to remove the hazardous conditions.</p> <p>The prompt action in some instances may require one or more of the following:</p> <ul style="list-style-type: none"> ■ Implementation an emergency plan (§192.615). ■ Evacuating premises. ■ Blocking off an area. ■ Rerouting traffic. ■ Eliminating sources of ignition. ■ Venting the area by removing manhole covers, barholing, installing vent holes, or other means. ■ Stopping the flow of gas by closing valves or other means. ■ Notifying emergency responders. 	<ul style="list-style-type: none"> ■ Any leak which, in the judgment of operating personnel at the scene, is regarded as an immediate hazard. ■ Escaping gas that has ignited. ■ Any indication of gas, which has migrated into or under a building, or into a tunnel. ■ Any reading at the outside wall of a building, or where gas would likely migrate to an outside wall of a building. ■ Any reading of 80% LEL, or greater, in a confined space. ■ Any reading of 80% LEL, or greater in small substructures (other than gas associated substructures) from which gas would likely migrate to the outside wall of a building. ■ Any leak that can be seen, heard, or felt, and which is in a location that may endanger the general public or property.
2	A leak that is recognized as being non-hazardous at the time of detection, but requires scheduled repair based on probable future hazard	<p>Leaks shall be repaired or cleared within six months from the date the leak was reported. In determining the repair priority, criteria such as the following should be considered:</p> <ul style="list-style-type: none"> ■ Amount and migration of gas. ■ Proximity of gas to buildings and subsurface structures. ■ Extent of pavement. ■ Soil type, and soil conditions (such as frost cap, moisture and natural venting). <p>Grade 2 leaks should be reevaluated at least once every month until cleared. Grade 2 leaks may vary greatly in degree of potential hazard. Some Grade 2 leaks, when evaluated by the above criteria, may require a scheduled repair within the next five working days. Others will require repair within 30 days. During the working day on which the leak is discovered, these situations should be brought to the attention of the individual responsible for scheduling leak repair.</p> <p>On the other hand, many Grade 2 leaks, because of their location and magnitude, can be scheduled for repair on a normal</p>	<p>Leaks Requiring Action Ahead of Ground Freezing or Other Adverse Changes in Venting Conditions. Any leak which, under frozen or other adverse soil conditions, would likely migrate to the outside wall of a building.</p> <p>Leaks Requiring Action Within Three Months</p> <ul style="list-style-type: none"> ■ Any reading of 40% LEL, or greater, under a sidewalk in a wall-to-wall paved area that does not qualify as a Grade 1 leak. ■ Any reading of 100% LEL, or greater, under a street in a wall-to-wall paved area that has significant gas migration and does not qualify as a Grade 1 Leak. ■ Any reading less than 80% LEL in small substructures (other than gas associated substructures) from which gas would likely migrate creating a probable future hazard. ■ Any reading between 20% LEL and 80% LEL in a confined space. ■ Any reading on a pipeline operating at 30 percent SMYS, or greater, in a class 3 or 4 location, which does not qualify as a Grade 1 leak. ■ Any reading of 80% LEL, or greater, in gas associated substructures. ■ Any leak which, in the judgment of operating personnel at the scene, is of sufficient magnitude to justify scheduled

GRADE	DEFINITION	ACTION CRITERIA	EXAMPLES
		routine basis with periodic reinspection as necessary.	repair.
A follow up leak investigation shall be conducted after the repair of each Grade 1 and Grade 2 leak to determine the effectiveness of the leak repair, as evidenced by a gas concentration reading of 0%.			
3	A leak that is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous.	These leaks should be reevaluated during the next scheduled survey, or within 15 months of date reported, whichever occurs first, until the leak is re-graded or repaired within 36 months.	Leaks Requiring Reevaluation at Periodic Intervals <ul style="list-style-type: none"> ▪ Any reading of less than 80% LEL in small gas associated substructures ▪ Any reading under a street in areas without wall-to-wall paving where it is unlikely the gas could migrate to the outside wall of a building. ▪ Any reading of less than 20% LEL in a confined space.

Figure: 22 TAC §139.35(b)

Classification	Violation	Citation	Suggested Sanctions
Administrative	Failure to return seal imprint and/or portrait	§§133.97(e), (f); 137.31(a)	Reprimand/\$250.00
	Failure to report: change of address or employment, or of any criminal convictions	§137.5	Reprimand/\$100.00
	Failure to respond to Board communications	§137.51(c)	Reprimand/\$500.00
	Failure to include "inactive" or "retired" representation with title while in inactive status	§137.13(f)	Reprimand/\$250.00
Engineering Misconduct	Gross negligence	§137.55(a), (b)	Revocation/\$3,000.00
	Failure to exercise care and diligence in the practice of engineering	§137.55(b), §137.63(b)(6)	1 year probated suspension/\$1500.00
	Incompetence; includes performing work outside area of expertise	§137.59(a), (b)	3 year suspension/\$3,000.00
	Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	§139.43(b)	3 year suspension/\$3,000.00
	Felony Conviction with incarceration	§139.43(a)	Revocation/\$3,000.00
Licensing	Fraud or deceit in obtaining a license	§§1001.452(a)(2), 1001.453	Revocation/\$3,000.00
	Retaliation against a reference	§137.63(c)(3)	1 year probated suspension/\$1,500.00
	Enter into a business relationship which is in violation of §137.77(Firm Compliance)	§137.51(d)	1 year probated suspension/\$1,000.00
Ethics Violations	Failure to engage in professional and business activities in an honest and ethical manner	§137.63(a)	2 year probated suspension/\$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are fraudulent or deceitful.	§137.57(a) and §137.57(b)(1) or (2)	2 year suspension/\$2,500.00
	Misrepresentation; issuing oral or written assertions in the practice of engineering that are misleading	§137.57(a) and §137.57(b)(3)	1 year probated suspension/\$1000.00
	Conflict of interest	§137.57(c), (d)	2 year suspension/\$2,500.00
	Inducement to secure specific engineering work or assignment	§137.63(c)(4)	2 year probated suspension/\$2,500.00
	Accept compensation from more than one party for services on the same project	§137.63(c)(5)	2 year probated suspension/\$2,500.00
	Solicit professional employment in any false or misleading advertising	§137.63(c)(6)	1 year probated suspension/\$2,500.00
	Offer or practice engineering while license is expired or inactive	§§137.7(a), 137.13(g)	1 year probated suspension/\$500.00
	Failure to act as a faithful agent to their employers or clients	§137.63(b)(4)	1 year probated suspension/\$1,500.00
	Reveal confidences and private information	§137.61(a), (b), (c)	Reprimand/\$1,500.00
	Attempt to injure the reputation of another	§137.63(c)(2)	1 year probated suspension/\$1,500.00
	Retaliation against a complainant	§137.63(c)(3)	1 year probated suspension/\$1,500.00
	Aiding and abetting unlicensed practice or other assistance	§§137.63(b)(3), 137.63(c)(1)	3 year probated suspension/\$3,000.00
	Failure to report violations of others	§137.55(c)	Reprimand/\$1,500.00
	Failure to consider societal and environmental impact of actions	§137.55(d)	Reprimand/\$1,500.00
	Failure to prevent violation of laws, codes, or ordinances	§137.63(b)(1), (2)	Reprimand/\$1,500.00

	Failure to conduct engineering and related business in a manner that is respectful of the client, involved parties and employees	§137.63(b)(5)	1 year probated suspension/\$1,500.00
	Competitive bidding with governmental entity	§137.53	Reprimand/\$1,500.00
	Expressing an opinion before a court or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion.	§137.59(c)	2 year suspension/\$2,500.00
	Falsifying documentation to demonstrate compliance with CEP	§137.17(p)(2), (3)	2 year suspension/\$2,500.00
	Action in another jurisdiction	§137.65(a) and (b)	Similar sanction as listed in this table if action had occurred in Texas
Improper use of Seal	Failure to safeguard seal <u>and/or electronic signature.</u>	§137.33(d)	Reprimand/\$1,000.00
	Failure to sign, seal, date work	§§137.33(e), (f), (h), 137.35(a), (b)	Reprimand/\$500.00
	Alter work of another	§§137.33(i), 137.37(3)	1 year probated suspension/\$1,500.00
	Sealing work not performed or directly supervised by the professional engineer	§137.33(b)	Reprimand/\$1,000.00
	Practice or affix seal with expired or inactive license	§§137.13(h), 137.37(2)	1 year probated suspension/\$500.00
	Practice or affix seal with suspended license	§137.37(2)	Revocation/\$3,000.00
	Preprinting of blank forms with engineer seal; use of a decal or other seal replicas; rubber stamp or computer-generated signature (scanned image of original) in lieu of actual signature	§137.31(e), (f)	1 year probated suspension/\$1,500.00
	Sealing work endangering the public	§137.37(1)	Revocation/\$3,000.00
	Work performed by more than one engineer not attributed to each engineer	§137.33(g)	Reprimand/\$500.00
	Improper use of standards	§137.33(c)	Reprimand/\$500.00

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Hearing on Autism Spectrum Disorders

The Texas Council on Autism and Pervasive Developmental Disorders (www.autismcouncil.org) invites you to a hearing on Autism Spectrum Disorders in Texas on December 12, 2007, at the Texas State Capitol Building, Room E1.012 from 10 a.m. - 3 p.m.

NOTE: The meeting will be web-cast live at <http://www.senate.state.tx.us/bin/live.php>

The hearing will be open to the public. Invited participants include representatives from the following organizations:

1. The Texas Office for Prevention of Developmental Disabilities
2. The Children's Policy Council
3. The Council of Families for Children
4. Private Providers Association of Texas
5. Texas Council of Community MHMR Centers
6. The Arc of Texas
7. Governor's Council on Disabilities
8. The Texas Council on Developmental Disabilities
9. Autism Society of America - Texas
10. Texas Correctional Office on Offenders with Medical or Mental Impairments
11. Advocacy Incorporated
12. Families for Early Autism Treatment - Texas
13. Mental Health Association of Texas
14. The Texas Special Education Continuing Advisory Committee
15. Representatives from the Texas University System

GOAL

The Council's planning for the next legislative session has begun as its 2008 State Plan, required under Chapter 114, is in the early stage of development. The Council would like to hear from major stakeholder groups. Public and invited testimony at this hearing will help shape the development of the recommendations that will ultimately be given to the Governor, Lieutenant Governor and state legislature. The 2006 State Plan can be reviewed on the Council website (www.autismcouncil.org).

The Council invites testimony on issues of concern for Texans with autism spectrum disorders throughout the lifespan. Of particular interest will be comments on rules and regulations, service provision, critical social issues, research, and legislation. The Council plans to consider additional issues affecting Texans including transportation, housing, employment, eligibility and access, and education.

Written testimony will be accepted in lieu of personal testimony. Written comments can also be provided to support and expand on verbal presentations.

WHERE/WHEN

Wednesday, December 12, 2007, 10 a.m. - 3 p.m.

State Capitol Building, Room E1.012, Austin, Texas

For questions, contact: Ron Ayer, (512) 438-5001, ron.ayer@dads.state.tx.us

Dr. Richard Garnett, (817) 877-1474, autismdocuments@yahoo.com
TRD-200705882

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Filed: November 27, 2007

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 16, 2007, through November 22, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 28, 2007. The public comment period for this project will close at 5:00 p.m. on December 28, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Davis Petroleum Corporation; Location: The proposed well is located in State Tract (ST) 290 of Galveston Bay, approximately 4.5 miles east of Kemah, in Chambers County, Texas. The well can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; 311849E 3269956N (29°32.8047'N, -94°56.5088W). The proposed pipeline is also located in ST 290 and travels in a northeasterly direction from said well to an existing Davis Petroleum Corporation production platform located in ST 251, Galveston Bay, Chambers County, Texas. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities associated with proposed Well No. 1. Such activities include installation of a typical marine barge and keyway, a shell and gravel pad, production structures with attendant facilities, and flowlines. Additionally, the applicant proposes to displace 3,700 cubic yards of material during the installation of a 6,417-linear-foot, 8-inch pipeline. CCC Project No.: 08-0029-F1;

Type of Application: U.S.A.C.E. permit application #SWG-2007-929 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200705883

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: November 27, 2007



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/26/07 - 12/02/07 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/26/07 - 12/02/07 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/07 - 12/31/07 is 7.50% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/07 - 12/31/07 is 7.50% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200705738

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 19, 2007



Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/03/07 - 12/09/07 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/03/07 - 12/09/07 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 11/01/07 - 11/30/07 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 11/01/07 - 11/30/07 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/08 - 03/31/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/08 - 03/31/08 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 01/01/08 - 03/31/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code¹ for the period of 01/01/08 - 03/31/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 01/01/08 - 03/31/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/08 - 03/31/08 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 01/01/08 - 03/31/08 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/07 - 12/31/07 is 7.50% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/07 - 12/31/07 is 7.50% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

⁴Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200705877

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 27, 2007



Employees Retirement System of Texas

Request for Applications

In accordance with §1551.213 and §1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Health Maintenance Organizations ("HMOs") to provide services within their approved service areas in Texas under the Texas Employees Group Benefits Program ("GBP"), during Fiscal Year 2009, beginning September 1, 2008 through August 31, 2009. The locations in Texas for which proposals

may be made are included in the RFA. HMOs must provide the level of benefits required in the RFA and meet other requirements.

An HMO wishing to submit an application to this request must: 1) have a current Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the application is made at least since March 1, 2007, and 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the application, adequate to provide health care to GBP participants.

The RFA will be available on or after December 14, 2007 from the ERS' web site, and all applications must be received at ERS by 12:00 Noon (CST) on February 4, 2008. To access the RFA from the web site, interested HMOs must email their request to: ivendorquestions@ers.state.tx.us. The email request must include the HMO's full legal name, street address, as well as phone and fax numbers of an immediate HMO contact. Upon receipt of your emailed request, a user ID and password will be issued to the requesting HMO that will permit access to the secured RFA. General questions concerning the RFA may be emailed to: ivendorquestions@ers.state.tx.us. Inquiries and responses, if applicable, are frequently updated. The RFA will be discussed at an HMO web-based bidders conference on January 15, 2008, beginning at 3:00 p.m. (CST). The registration deadline for conference participation is 4:00 p.m. (CST) on January 11, 2008. HMOs may access ERS' web site for details regarding the web-based conference by selecting the Vendor link.

ERS will base its evaluation and selection of HMOs on factors including, but not limited to the following, which are not necessarily listed in order of priority: (a) compliance with the RFA, (b) operating requirements, (c) provider network, (d) service area, (e) network quality, (f) administrative quality, (g) premium rates, (h) experience serving large group programs, and (i) other factors, as determined during the evaluation process. Each application will be evaluated both individually and relative to the application of other HMOs providing service in the same or a similar area. Complete application instructions will be included with the RFA.

ERS reserves the right to select none, one, or more than one HMO per service area when it is determined that such action would be in the best interest of ERS, the GBP, its participants or the state of Texas. ERS reserves the right to reject any or all applications and call for new applications if deemed by ERS to be in the best interests of the GBP, its participants or the state of Texas. ERS also reserves the right to reject any application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or the RFA or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFA and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP, its participants or the state of Texas.

TRD-200705923

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: November 28, 2007



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Cemex Construction Materials, L.P.; DOCKET NUMBER: 2007-1314-AIR-E; IDENTIFIER: RN102437274; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: quarry and rock crushing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §122.145(2)(C) and §122.146(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to report a deviation within 30 days after the end of the deviation reporting period and to submit the annual compliance certification; PENALTY: \$4,950; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2007-0558-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: petroleum refinery and natural gas processing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-102M5, Special Condition (SC) 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 40 Code of Federal Regulations (CFR) §60.482-7(c)(1) and §63.168(d)(2) and THSC, §382.085(b), by failing to either monitor all the valves in the Mercaptan Unit during the first quarter of 2005 or submit notification of an alternate monitoring schedule for the unit to allow for the quarter to be exempt from monitoring; 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to include two reportable emissions events in the January 27 and July 13, 2006, deviation reports and 42 non-reportable events in the January 28 and July 28, 2005, and July 13, 2006, deviation reports; 30 TAC §§101.20(3), 111.111(a)(1)(A), and 116.715(a), Flexible Permit Number 9868A and PSD-TX-102M5, SC 23, 40 CFR §60.102(a)(2), and THSC, §382.085(b), by failing to consistently operate Units 29 and 40 below the six-minute average opacity emissions limit of 20%; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-102M5,

SC 30, and THSC, §382.085(b), by failing to consistently route emissions to flares; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-1025M, SC 37.I, 40 CFR §63.168(f)(1), and THSC, §382.085(b), by failing to repair a valve; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-1025M, SC Number 2B, 40 CFR §§60.18(c)(2) and (e), 61.349(a)(2)(iii), and 63.11(b)(3), and THSC, §382.085(b), by failing to operate the flare with a constant pilot flame; 40 CFR §63.427(a)(3) and THSC, §382.085(b), by failing to continuously monitor the thermal oxidizer temperature in the loading racks terminal; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-102M5, SC 10, and THSC, §382.085(b), by failing to prevent visible emissions; 40 CFR §63.643 and THSC, §382.085(b), by failing to operate Incinerators A and B with minimum firebox temperatures of 1,209 degrees Fahrenheit; 40 CFR §60.18(c)(1) and §63.11(b)(4) and THSC, §382.085(b), by failing to prevent visible emissions; 40 CFR §60.104(a)(2) and THSC, §382.085(b), by failing to limit sulfur dioxide concentration to 250 parts per million by volume; 40 CFR §60.113b(b)(ii) and THSC, §382.085(b), by failing to conduct annual secondary seal inspections; 40 CFR §60.115b(a)(3) and THSC, §382.085(b), by failing to submit an inspection failure report; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-1025M, SC 2B, 40 CFR §60.18(c)(2) and §61.349(a)(2)(iii), and THSC, §382.085(b), by failing to operate the flare with a constant pilot flame; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-102M5, SC 37.I, 40 CFR §60.482-7(d)(1), and THSC, §382.085(b), by failing to repair four valves; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-102M5, SC 37.I, 40 CFR §60.482-2(c)(1) and §60.632(a), and THSC, §382.085(b), by failing to report three pumps; 40 CFR §60.482-2(c)(2) and §60.632(a) and THSC, §382.085(b), by failing to make first attempt at repair of two pumps; 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9868A and PSD-TX-102M5, SC 37.I, 40 CFR §60.482-7(d)(1) and §60.632(a), and THSC, §382.085(b), by failing to report 14 valves within 15 days after the discovery of a leak; 40 CFR §60.482-2(a)(1) and §60.632 and THSC, §382.085(b), by failing to monthly monitor pump number 346.000 in Column 31 Hazardous Organic National Emission Standards for Hazardous Air Pollutants; 40 CFR §61.356(b) and THSC, §382.085(b), by failing to record the measurements, calculations, and other documentations used to determine that the total benzene quantity does not exceed six megagrams per year; 40 CFR §61.357(d)(2) and THSC, §382.085(b), by failing to include the range of benzene concentrations for the waste streams in the annual benzene summary report; and 40 CFR §61.357(d)(6) and THSC, §382.085(b), by failing to submit a quarterly equipment inspection certification report; PENALTY: \$212,248; Supplemental Environmental Project (SEP) offset amount of \$84,899 to be applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: City of DeSoto; DOCKET NUMBER: 2007-1044-WQ-E; IDENTIFIER: RN101408334; LOCATION: DeSoto, Dallas County, Texas; TYPE OF FACILITY: collection system; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; and 30 TAC §319.302(b) and (c) and the Code, §26.039(b) and (e), by failing to provide notification of a spill to local government officials, the news media, and the TCEQ regional office; PENALTY: \$18,825; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Steve Claubaugh dba Discount Materials; DOCKET NUMBER: 2007-1159-MSW-E; IDENTIFIER: RN105228365; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: mulching and composting recycling; RULE VIOLATED: 30 TAC §37.921(a) and §328.5(d), by failing to demonstrate financial assurance for closure, post closure, and corrective action; and 30 TAC §328.4(b) and §328.5(b), by failing to notify the agency prior to engaging in recycling operations; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(5) COMPANY: City of McAllen; DOCKET NUMBER: 2007-1251-MWD-E; IDENTIFIER: RN102635604; LOCATION: Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010633004, Permit Conditions Number 2(g), and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of untreated wastewater; PENALTY: \$32,400; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: City of Mont Belvieu; DOCKET NUMBER: 2007-1293-MWD-E; IDENTIFIER: RN102919941; LOCATION: Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and §305.65, TPDES Permit Number 11030001, Permit Condition Number 4.c., and the Code, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$18,900; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200705737

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 19, 2007



Notice of Opportunity for Comments Concerning a Proposed Amendment to the List of *De Minimis* Facilities or Sources

The Texas Commission on Environmental Quality (TCEQ), under 30 TAC Chapter 116, requests public comment concerning a proposed amendment to the "List of *De Minimis* Facilities or Sources" authorized by 30 TAC §116.119.

The TCEQ is proposing to amend the "List of *De Minimis* Facilities or Sources" by adding the following: application of lubricants, including greases and oils without aerosol propellants for maintaining equipment and other facilities; manual application (with brushes, cloth, spray bottle (without aerosol propellant), or tube dispensing equipment, only) of cleaning or stripping solutions or coatings; application of aqueous detergents, surfactants, and other cleaning solutions containing less than one percent of any organic compound by weight or containing less than five percent of any organic compound with a vapor pressure less than 0.002 pounds per square inch absolute; and application of aerosol-propelled organic liquids using hand-held devices for maintaining equipment and other facilities where usage is less than four aerosol cans per day on a 12-month rolling average basis.

Section 116.119(c)(1) allows for amendments to the "List of *De Minimis* Facilities or Sources" by the executive director for facilities or sources considered to be *de minimis*. If added to the "List of *De Minimis* Facilities or Sources," the specified facilities or sources are no longer

required to obtain authorization from the TCEQ prior to construction. Therefore, the previous facilities or sources are proposed to be *de minimis* facilities or sources.

The addition or deletion of a category of facilities, sources, or groups of facilities or sources to the "List of *De Minimis* Facilities or Sources" is subject to the procedural requirements of 30 TAC §116.119, which includes a 30-day public comment period. The "List of *De Minimis* Facilities and Sources" is located on the TCEQ Web site at: <http://www.tceq.state.tx.us/permitting/air/guidance/newsources-view/list-of-de-minimis-facilities.html>. Any interested or affected person has the opportunity to provide written comments pertaining to the addition or deletion of a category of facilities, sources, or groups of facilities or sources to the "List of *De Minimis* Facilities or Sources."

Comments may be mailed to Steven Hagood, Texas Commission on Environmental Quality, Office of Permitting, Remediation and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments must be received by 5:00 p.m., January 7, 2008. To inquire about the technical review of the *de minimis* request, contact Mr. Hagood at (512) 239-1580.

TRD-200705867

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 27, 2007



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss

the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: A & L Partners, LLC dba Hurst Food Mart; DOCKET NUMBER: 2006-1844-PST-E; TCEQ ID NUMBER: RN101539930; LOCATION: 1401 West Hurst Boulevard, Hurst, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), and (d)(1)(B) and Texas Water Code (TWC), §26.3475(a) and (c)(1), by failing to monitor its underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to accurately conduct manual or automatic monthly inventory control procedure for all USTs, by failing to monitor the pressurized piping associated with the UST system in a manner designed to detect releases from any portion of the piping system, and by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §115.244(1) and (3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to properly conduct daily and monthly inspections of the Stage II vapor recovery system; 30 TAC §115.246(1) and (3) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and by failing to make the records immediately available for review upon request by agency personnel; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the required annual and triennial testing to verify proper operation of the Stage II equipment; 30 TAC §115.242(3)(J) and (9) and THSC, §382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper operating conditions specified by the manufacturer and/or any applicable California Air Resources Board executive order(s), and free of defects that would impair the effectiveness of the system; and 30 TAC §115.222(3) and §115.242(4) and THSC, §382.085(b), by failing to prevent the release of gasoline vapors from the Stage II vapor recovery system; PENALTY: \$10,500; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Alan Karl dba Coles Crossing; DOCKET NUMBER: 2007-0475-PWS-E; TCEQ ID NUMBER: RN102952033; LOCATION: 4621 Texana, near Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the Maximum Contaminant Level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes (TTHM), based on a running annual average during the second - fourth quarters of 2005 and the first - fourth quarters of 2006, when it reported TTHM levels of 0.166 mg/L, 0.191 mg/L, 0.203 mg/L, 0.198 mg/L, 0.166 mg/L, 0.172 mg/L, and 0.168 mg/L respectively; PENALTY: \$800; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Anna Jeffcoat dba Lakeshore Sites Water Company; DOCKET NUMBER: 2006-0778-MLM-E; TCEQ ID NUMBER: RN101207108; LOCATION: 792 Jeffcoat Road, Haskell, Haskell County, Texas; TYPE OF FACILITY: PWS; RULES VIOLATED: TWC, §11.081, by failing to obtain authorization from the TCEQ prior to diverting state water from Lake Stamford; 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for trihalomethane, based on a running annual average; and 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acid, based on running annual average; PENALTY: \$14,495; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE:

Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: Clint Stafford dba Downtown Car Wash and Allen Spears dba Downtown Car Wash; DOCKET NUMBER: 2003-1011-PST-E; TCEQ ID NUMBER: RN101433233; LOCATION: 1001 North Hall, Dallas, Dallas County, Texas; TYPE OF FACILITY: car wash with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,150; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Joseph Gaber dba Cody's Market & Marina, and Victoria Gaber dba Cody's Market & Marina; DOCKET NUMBER: 2006-0682-MLM-E; TCEQ ID NUMBER: RN101230654; LOCATION: 5105 Tin Top Road, Weatherford, Parker County, Texas; TYPE OF FACILITY: PWS; RULES VIOLATED: 30 TAC §§290.42(b)(1), 290.46(d)(2)(A), 290.110(d)(3)(C)(ii), and 290.46(h), by failing to provide disinfection equipment to maintain a free chlorine residual of 0.2 mg/L throughout the distribution system at all times, by failing to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a diethyl-p-phenylenediamine indicator, and by failing to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement for well Number 1; 30 TAC §290.41(c)(3)(B), (J), and (K), by failing to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, by failing to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, by failing to provide a well casing vent with a 16-mesh or finer corrosion resistant screen, and by failing to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound; 30 TAC §290.41(c)(3)(N), by failing to install a flow meter on the well pump discharge line; 30 TAC §290.41(c)(3)(O), by failing to enclose the well in a well house with a lock or an intruder-resistant fence, 30 TAC §290.46(n)(1), (2), and (3), by failing to submit as-built plans and specifications, prepared by a registered professional engineer well versed in the design and construction of PWSs, which describe the existing facilities, by failing to provide well completion data for well Number 1, and by failing to provide an accurate up-to-date map of the distribution system; 30 TAC §§290.45(f), 290.42(1), and 291.121, by failing to keep on file and make available for commission review the following records: monthly operating reports, a plant operations manual, and an up-to-date chemical and microbiological plan; 30 TAC §290.45(c)(1)(A)(ii), by failing to provide a pressure tank capacity of ten gallons per connection with a minimum requirement of 220 gallons; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs at retail service stations; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to perform an operability test on the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years; 30 TAC §334.50(b)(1)(A), (b)(2)(A)(ii)(I), and (b)(2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more methods of release detection

or test the piping by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure, and by failing to test the line leak detector at least once per year for performance and operational reliability; and 30 TAC §334.74, by failing to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days or another procedure and schedule approved by the agency; PENALTY: \$19,651; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Mario Solis dba 1732 Used Auto Parts; DOCKET NUMBER: 2003-1239-MLM-E; TCEQ ID NUMBER: RN103023677; LOCATION: approximately 1/2 mile east of the intersection of Farm-to-Market Road (FM) 1421 and FM 1732, Olmito, Cameron County, Texas; TYPE OF FACILITY: automobile salvage yard; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121(a), and 40 Code of Federal Regulations §122.21(a)(1), by failing to obtain authorization prior to discharging storm water associated with an industrial activity; and 30 TAC §330.15(a) and §328.13(a), by failing to prevent the disposal of municipal solid waste, including waste tires, construction debris, and a lead-acid battery at the facility; PENALTY: \$12,600; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200705871

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 27, 2007



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 7, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the com-

mission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 7, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Brazos Valley Petroleum Corporation dba In & Out 7; DOCKET NUMBER: 2007-0759-PST-E; TCEQ ID NUMBER: RN102482346; LOCATION: 110 West Freeway, Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(A) and Texas Health and Safety Code, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resource Board executive order, and free of defects that would impair the effectiveness of the system; PENALTY: \$1,000; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Doreen Swadley dba GreenBell; DOCKET NUMBER: 2007-0725-LII-E; TCEQ ID NUMBER: RN104452370; LOCATION: 6 Ironwood Court, Belton, Bell County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.70, by failing to obtain a permit for installation of an irrigation system; 30 TAC §344.93(b), by failing to fulfill warranty requirements for a new irrigation system; and 30 TAC §344.96, by failing to include a license number on all advertisements; PENALTY: \$551; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200705870

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 27, 2007



Notice of Request for Nominations to Fill Positions on the Pollution Prevention Advisory Committee

The Texas Commission on Environmental Quality is soliciting nominations to fill several positions on the Pollution Prevention Advisory Committee (PPAC). The legislatively created advisory committee, established under Texas Health and Safety Code, §361.0215, advises the commission on the state's policy and goals for pollution prevention and waste minimization.

The PPAC is composed of nine voting members who offer a balanced representation of environmental and public interest groups and the regulated community. In the past the commission has appointed *ex-officio* members to provide additional participation from other members of the regulated community and the public who work on pollution prevention and performance-based regulatory initiatives. However, at this time the commission chooses to discontinue the appointing of new or replacement *ex-officio* members, and will allow the current *ex-officio* members to complete their appointed term.

Individuals interested in being considered by the commission should submit a one-page letter of interest and brief resume or biography. **All materials must be received by the commission no later than 5:00 p.m. on January 18, 2008.**

The PPAC advises the commission on: the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization; the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households; the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Texas Health and Safety Code, §361.023(a); and the development of state purchasing guidelines for "environmentally preferable" products, under the authority provided in Texas Health and Safety Code, §361.423.

The PPAC operates under the requirements of 30 TAC Chapter 5, Advisory Committees and Groups. The 79th Legislature, 2005, authorized reimbursement for committee members' travel expenses.

The commissioners invite nominations for the following positions. Nominations may be made for oneself; however, it is not necessary for the individuals who were nominated after the September 14 issue to apply again. Each nomination should include a brief cover letter and biographical summary that includes the individual's experience and qualifications, and an agreement to serve on the committee if appointed. Please submit nomination(s) for consideration by the commission for the following terms: **two full member representatives from the regulated community (to fill four-year terms that expire on August 31, 2011); and two full member representatives from an environmental or public interest group (to fill four-year terms that expire on August 31, 2011).**

Written nominations must be received in the Small Business and Environmental Assistance Division Office **by 5:00 p.m. on January 18, 2008**, via mail, hand delivery, email, or fax. Nominations should be directed to: Ted Hazen, Small Business and Environmental Assistance Division, MC 112, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. They can also be sent via e-mail to thazen@tceq.state.tx.us, or they can be faxed to (512) 239-1065. Documents can be submitted via hand delivery to the Small Business and Environmental Assistance Division, 12100 Park 35 Circle, Building F, Suite 1301, Austin, Texas 78753.

Questions regarding the PPAC and the current nominations process can be directed to Ted Hazen at (512) 239-3100.

TRD-200705884

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: November 27, 2007



Notice of Water Quality Applications

The following notices were issued during the period of November 7, 2007 through November 15, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.**

INFORMATION SECTION

BAYVIEW MUNICIPAL UTILITY DISTRICT has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010770001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 300,000 gallons per day to a daily average flow not to exceed 900,000 gallons per day. The facility is located at 3206 State Highway 146, approximately 1,200 feet west of State Highway 146 and 5,500 feet north of the intersection of Farm-to-Market Road 646 and State Highway 146 in Galveston County, Texas.

BLUE JAY DAIRY has applied for a major amendment of, and conversion to an individual permit, TPDES Registration No. WQ0003439000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy facility at a maximum capacity of 1,570 head of which 1,500 head are milking cows, and increase land application acreage from 188 acres to 265 acres. The facility is located on the east side of Farm-to-Market Road 219, approximately one mile south of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 8 in Erath County, Texas

BOYS AND GIRLS COUNTRY OF HOUSTON INC has applied for a renewal of TPDES Permit No. WQ0011814001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. Texas Commission on Environmental Quality (TCEQ) received this application on August 6, 2007. The facility is located at a point approximately 1.7 miles north of the intersection of U.S. Highway 290 and Roberts Road, approximately 2.0 miles northeast of the City of Hockley in Harris County, Texas.

BROOKSHIRE MUNICIPAL WATER DISTRICT as applied for a major amendment to TPDES Permit No. WQ0010001001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 650,000 gallons per day to a daily average flow not to exceed 970,000 gallons per day and to authorize the relocation of the point of discharge to a location approximately 60 feet upstream of the current point of discharge. The facility is located at 3502 10th Street, immediately south of the intersection of Highway 10 and approximately 500 feet west of Brookshire Creek in Waller County, Texas.

CHAMP'S WATER COMPANY has applied to for a renewal of TPDES Permit No. WQ0011158001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 28,000 gallons per day. The facility is located at 6102 Laramie Street, east of the intersection of Old Humble Road and Laramie Street and approximately 3,500 feet northwest of the intersection of U.S. Highway 59 and Old Humble Road in Harris County, Texas.

CSA LIMITED INC which operates a facility which packages various liquid products for retail distribution, has applied for a renewal of TPDES Permit No. WQ0004084000, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4000 gallons per day via Outfall 001; and treated utility wastewaters, mop water, water from water baths, reverse osmosis reject water, wash-water from floor sumps, boiler blowdown, and storm water at a daily average flow not to exceed 8000 gallons per day via Outfall 002. The facility is located at 16212 State Highway 249, approximately 1.7 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960, Harris County, Texas.

GUADALUPE-BLANCO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011496001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 0.2 mile west of Farm-to-Market Road 306 and 3.5 miles southeast of the intersection of Farm-to-Market Road 484 and Farm-to-Market Road 306 in Comal County, Texas.

HARRIS COUNTY has applied for a renewal of TPDES Permit No. WQ0013027001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 25011 West Hardy Road, inside Arthur Bayer Park, Spring, Texas in Harris County, Texas.

KING RANCH INC has applied to the TCEQ for a new permit, Proposed Permit No. WQ0014808001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 25,500 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1.5 miles south of Texas Highway 141 and 2.3 miles west of the City of Kingsville in Kleberg County, Texas.

LAND TEJAS TEXAS CITY LTD has applied for a new permit, proposed TPDES Permit No. WQ0014819001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 0.6 miles north of the intersection of Avenue A and Autry Drive in Texas City in Galveston County, Texas.

NORTHGATE CROSSING MUNICIPAL UTILITY DISTRICT NO. 2 has applied for a renewal of TPDES Permit No. WQ0012979004, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 28200 East Hardy Road in Spring in Harris County, Texas.

RHODIA INC which operates an inorganic chemicals plant which produces sulfuric acid and operates a hazardous waste incinerator has applied for a major amendment to TPDES Permit No. WQ0000542000 to authorize an increase in the daily average flow from 1,400,000 gallons per day to 1,440,000 gallons per day and an increase in the daily maximum flow from 2,400,000 gallons per day to 3,000,000 gallons per day at Outfall 001; the addition of tiered permit limits at Outfall 001; addition of sulfur dioxide (SO₂) scrubber blowdown via Outfall 001; and reduction of the monitoring frequency for various parameters from once per month to twice per year at Outfall 001. The current permit authorizes the discharge of treated process wastewater, treated incinerator wastewater, utility wastewater, and contaminated storm water runoff at a daily average flow not to exceed 1,400,000 gallons per day via Outfall 001. The facility is located at 8615 Manchester Street, approximately one-half mile west of the intersection of Manchester Street and Interstate Loop 610, in the City of Houston, Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

ST. FRANCIS VILLAGE INC has applied for a renewal of TPDES Permit No. WQ0010612001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 85,000 gallons per day. The facility is located approximately 1 mile north of Rock Creek Park and approximately 2.5 miles south of Benbrook Dam in Tarrant County, Texas.

THE CITY OF STRATFORD has applied for a major amendment to Permit No. WQ0010293002, to authorize an increase in the daily average flow from 200,000 gallons per day to 375,000 gallons per day and to decrease the acreage irrigated from 640 acres to 331 acres. The wastewater treatment facility and disposal site are located approximately 600 feet north of State Highway 15 and 1.3 miles east of the intersection of State Highway 15 and U.S. Highway 287 in Sherman County, Texas. The wastewater treatment facility and disposal site are located in the drainage basin of Coldwater Creek which flows into the State of Oklahoma in Segment No. 100 of the Canadian River Basin.

TINA LEE TILLES has applied for a renewal of TPDES Permit No. WQ0011900001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,700 gallons per day. The facility is located between Farm-to-Market Road 1960 and Cypress Creek, just south of the intersection of Stuebner-Airline Road and Strack Road in Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll-free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200705926

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2007



Notice of Water Quality Applications

The following notices were issued during the period of November 8, 2007 through November 20, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012070004, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located in the southwest corner of the Orange Grove Elementary School campus at 4514 Mount Houston Road in Harris County, Texas.

AQUA UTILITIES INC has applied for a renewal of TPDES Permit No. WQ0012519001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately three eighth (3/8) mile east of Kuykendahl Road and approximately one (1) mile north of the intersection of Hufsmith Road and Kyukendahl Road in Harris County, Texas

CHAMP'S WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0011739001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 1233 Verhalen, approximately 100 feet north and 600 feet east of the intersection of Verhalen Avenue and Reeveston Road, north of the City of Houston in Harris County, Texas.

CITY OF ANGLETON has applied for a major amendment to TPDES Permit No. 10548-002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 525,000 gallons per day. The facility is located on the north bank of Brushy

Bayou, approximately 2,000 feet northwest of the State Highway 35 crossing of Brushy Bayou in Brazoria County, Texas.

CITY OF GALVESTON has applied to the TCEQ for a major amendment to TPDES Permit No. WQ0010688001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 10,000,000 gallons per day to an annual average flow not to exceed 13,000,000 gallons per day. In addition, the city is requesting to remove the effluent limitations and monitoring requirements for copper or to change the effluent limitations for copper to the calculated water quality-based effluent limits for copper based on the current Texas Surface Water Quality Standards. The facility is located at 5200 Industrial Boulevard in the City of Galveston in Galveston County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495101, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 15600 Rock House Road, approximately 1.1 miles east-southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 525 in Harris County, Texas.

CITY OF HOUSTON has applied for a minor amendment to the TPDES Permit No. WQ0010495133 to authorize the City to haul sludge from the Harris County Municipal Utility District No. 203 Wastewater Treatment Facility to any of the City's other permitted facilities. The facility is located approximately 400 feet south of the intersection of Gears Road and Spears Road on the south side of Greens Bayou in Harris County, Texas.

ELI GRAVRIEL SASSON has applied to for a renewal of TPDES Permit No. WQ0011414002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located north of Greens Bayou, approximately 3,150 feet west of the intersection of Greens Road and Aldine Westfield Road, 5,100 feet east of the intersection of Greens Road and Hardy Road in Harris County, Texas.

GULF COAST TRADES CENTER has applied for a renewal of TPDES Permit No. WQ0011829001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,500 gallons per day. The facility is located 0.4 mile north of the intersection of Interstate Highway 45 and Sheppard Hill Road and approximately 4.1 miles north of the City of Willis on the west side of Interstate Highway 45 at 16673 I-45 in Montgomery County, Texas.

HARRIS COUNTY Bear Creek Park WWTP, 1001 Preston Street, 7th Floor, Houston, Texas, 77002, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010932001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located within Bear Creek Park, approximately 3 miles northeast of the intersection of Interstate Highway 10 and State Highway 6 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 249 has applied for a renewal of TPDES Permit No. WQ0013765001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons a day. The facility is located at 931 E. Cypresswood Drive, Spring, approximately 1,500 feet south-southwest of the confluence of Wunsche Gully and Lemm Gully, approximately 3,000 feet east of Interstate Highway 45 and approximately 3,800 feet west of the Hardy Toll Road in the northern portion of Harris County, Texas.

HUNTER'S GLEN MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011618003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility is located at 21603 Fox Trail Lane, west of and adjacent to Fox Trail Lane, approximately 3,400 feet east of Cypresswood Drive and 5,000 feet north of Farm-to-Market Road 1960 in Harris County, Texas.

MAGNOLIA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0014124001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 28747 Hardin Store Road, on the north side of Hardin Store Road approximately 2,400 feet east of the intersection of Hardin Store Road and Hufsmith-Dobin Road in Montgomery County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 10 has applied for a renewal of TPDES Permit No. WQ0011912002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 1,300 feet north of the intersection of Spring-Cypress Road and Dry Creek in Harris County, Texas.

PREFERRED BEEF GROUP LP which operates the Preferred Beef Group Plant, has applied for a minor amendment of TPDES Permit No. WQ0002757000 to authorize the addition of an irrigation storage pond at the facility. The existing permit authorizes the disposal of treated process water (process wash water, kill floor washdown water, and holding pen wash down wastewater), truck wash water, cooling water blowdown, boiler blowdown, and storm water runoff from the holding pens and the process facility at a daily average flow not to exceed 120,000 gallons per day via irrigation of 172 acres at a hydraulic application rate not to exceed 4.2 acre-feet/acre/year, which will remain the same. This permit will not authorize discharge of pollutants into water in the State. The facility and land application site are located at 910 East Industrial on the south side of State Highway 15, approximately 0.3 mile east of the intersection of State Highway 15 and State Highway 23, in the City of Booker, Lipscomb County, Texas.

SANDERSON FARMS INC (Production Division), which operates the Sanderson Farms Franklin Feed Mill and Truck Shop, an animal feed manufacturing, and truck maintenance and repair facility, has applied for a major amendment to TPDES Permit No. WQ0003847000 to authorize addition of an evaporation lagoon to receive and dispose of truck wash water at a daily average flow not to exceed 857 gallons per day via evaporation. The current permit authorizes the discharge of boiler blowdown and truck wash water at a daily average flow not to exceed 29,000 gallons per day via Outfall 001. The facility is located on U.S. Highway 79 approximately 3.2 miles northeast of the intersection of U.S. Highway 79 and State Road 1940 in the Community of New Baden, Robertson County, Texas.

STEPHEN JOEL FRIEDMAN has applied for a renewal of TPDES Permit No. WQ0013778001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located at 5930 State Highway 6 North near Langham Creek and approximately three-fourth (3/4) mile west of Addicks Satsuma Road in Harris County, Texas.

TOWN OF WINDOM has applied for a renewal of TPDES Permit No. WQ0010666001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility is located east of Burnett Creek about 1,000 feet west of Wall Street and approximately 0.25 mile southwest of the intersection of U.S. Highway 82 and Farm-to-Market Road 1743 in Fannin County, Texas.

U.S. SOUTHERN CORP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014829001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 215,000 gallons per day. The facility will be located at 7122 Randon School Road, Rosenberg, 4,200 feet east of the intersection of Marick Road and Randon School Road in Fort Bend County, Texas.

WHITEOAK SHORES SEWER SERVICE CORPORATION has applied for a new permit, proposed TPDES Permit No. WQ0014851001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 11,000 gallons per day. The facility will be located approximately 2 1/2 miles southwest of the City of Yantis, approximately 3/8 mile northeast of Lake Fork, adjacent to White Oak Drive and approximately 90 feet south of the intersection of White Oak Drive and Farm-to-Market Road 17 in Wood County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll-free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200705927

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 28, 2007

Texas Facilities Commission

Request for Proposals #303-8-10618

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-8-10618. TFC seeks a 5 or 10 year lease of approximately 3,046 square feet of office space in Mount Vernon, Franklin County, Texas.

The deadline for questions is December 12, 2007 and the deadline for proposals is December 19, 2007 at 3:00 p.m. The award date is January 16, 2008. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=74061.

TRD-200705922

Kay Molina

General Counsel

Texas Facilities Commission

Filed: November 28, 2007

Office of the Governor

Request for Grant Applications (RFA) for the Juvenile Accountability Block Grant (JABG) Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting statewide discretionary applications for projects that promote

greater accountability in the juvenile justice system for the federal fiscal year 2009 grant cycle.

Purpose: The purpose of the JABG Program is to reduce juvenile offending through accountability-based programs focused on the juvenile offender and the juvenile justice system.

Available Funding: Federal funds are authorized under the Omnibus Crime Control and Safe Streets Act of 2002, Public Law 107-273, 42 U.S.C. 3796 et seq. As of the date of the issuance of this RFA, the U.S. Congress has not finalized federal appropriations for federal fiscal year 2008. All grants awarded from this fund must comply with the requirements contained therein. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: No minimum or maximum funding levels.

Required Match: Grantees must provide matching funds of at least ten percent (10%) of total project expenditures. This requirement must be met through cash contributions.

Standards: Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3 (1 TAC Chapter 3) and the requirements of the federal regulations contained in 28 C.F.R. §95.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
 - (2) lobbying;
 - (3) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;
 - (4) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
 - (5) vehicles or equipment for government agencies that are for general agency use;
 - (6) weapons, ammunition, explosives or military vehicles;
 - (7) admission fees or tickets to any amusement park, recreational activity or sporting event;
 - (8) promotional gifts;
 - (9) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement or social activities in any way;
 - (10) membership dues for individuals;
 - (11) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);
 - (12) fundraising;
 - (13) medical services; and
 - (14) construction.
- Eligible Applicants:**
- (1) State agencies;
 - (2) Units of local government including crime control and prevention districts; and
 - (3) Native American Tribal Governments.

Requirements:

(1) Projects must address one or more of the following JABG Purpose Areas:

- (a) Juvenile Drug Courts;
- (b) Information Sharing;
- (c) School Safety; and
- (d) Accountability

(2) In addition, all juvenile justice projects must address at least one of the following priorities:

(a) **Family Stability.** Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.

(b) **Substance Abuse Early Intervention and Prevention.** Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives including control, prevention, and treatment.

(c) **Education.** Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) **Disproportionate Minority Contact (DMC).** Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) **Justice System Impact.** Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) **Gang Prevention.** Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) **Rural Access.** Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) **Training.** Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grand-funded projects must begin on or after August 1, 2008, and will expire on or before July 31, 2009.

Application Process: Applicants must access CJD's grant management website at <https://cjdonline.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to services provision.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's Grant Management Website on or before February 1, 2008.

Selection Process: For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost effectiveness.

Contact Person: If additional information is needed, contact Ryan Clinton at ryan.clinton@governor.state.tx.us or (512) 463-1919.

TRD-200705932

Christopher Burnett

Assistant General Counsel

Office of the Governor

Filed: November 28, 2007



Request for Grant Applications (RFA) for the Victims of Crime Act (VOCA) Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that provide services to victims of crime under the state fiscal year 2009 grant cycle.

Purpose: The purpose of the VOCA Fund Program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

- (1) responding to the emotional and physical needs of crime victims;
- (2) assisting victims in stabilizing their lives after a victimization;
- (3) assisting victims to understand and participate in the criminal justice system; and
- (4) providing victims with safety and security.

Available Funding: Federal funding is authorized for these projects under the Victims of Crime Act of 1984 (VOCA) as amended, 42 U.S.C. 10601 et seq. As of the date of the issuance of this RFA, the U.S. Congress has not finalized federal appropriations for federal fiscal year 2008. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: Minimum grant award - \$5,000.

Required Match: Grantees, other than Native American Tribes, must provide matching funds of at least twenty percent (20%) of total project expenditures. Native American Tribes must provide a five percent (5%) match. This requirement may be met through cash and/or in-kind contributions.

Standards: Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3 (1 TAC Chapter 3) and the requirements of the federal statutes that authorize this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying and administrative advocacy;
- (3) perpetrator rehabilitation and counseling or services to incarcerated individuals;
- (4) needs assessments, surveys, evaluations, and studies;
- (5) prosecution activities;
- (6) reimbursing crime victims for expenses incurred as a result of the crime;
- (7) most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergency), home health-care costs, in-patient treatment costs, hospital care, or other types of emergency or non-emergency medical or dental treatment. Grant funds can-

not support medical costs resulting from a crime, except for forensic medical examinations for sexual assault victims;

(8) relocation expenses. Grant funds may not support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

(9) administrative staff expenses. Grantees may not use grant funds to pay salaries, fees and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantee incurs the expense while providing direct services to crime victims. Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs;

(10) development of protocols, interagency agreements, and other working agreements;

(11) costs of sending individual crime victims to conferences;

(12) activities exclusively related to crime prevention or community awareness;

(13) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(14) victim-offender meetings that serve to replace criminal justice proceedings;

(15) management and administrative training for executive directors, board members, and other individuals that do not provide direct services;

(16) training to persons or groups outside the applicant agency;

(17) indirect organization costs such as the following: liability insurance on buildings; major maintenance of buildings; capital improvements; newsletters, including supplies, printing, postage, and staff time; security guards and body guards; and employment agency fees;

(18) any activities or related costs for diligent search;

(19) job skills training;

(20) alcohol and drug abuse treatment;

(21) fundraising activities;

(22) property loss. Grant funds may not be used to reimburse crime victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills;

(23) any portion of the salary of, or any other compensation for, an elected or appointed government official. Grants that fund juvenile courts or drug courts, regardless of the funding source, are exempt from this subsection;

(24) grant funds to purchase vehicles or equipment for governmental agencies that are for general agency use;

(25) admission fees or tickets to any amusement park, recreational activity, or sporting event; or

(26) promotional gifts;

(27) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way; and

(28) membership dues for individuals.

Eligible Applicants:

- (1) State agencies;
- (2) Units of local government;
- (3) Hospital districts;
- (4) Nonprofit corporations;
- (5) Native American tribes;
- (6) Crime control and prevention districts;
- (7) Universities;
- (8) Colleges;
- (9) Community supervision and corrections departments;
- (10) Councils of governments that offer direct services to victims of crime;
- (11) Hospital and emergency medical facilities that offer crisis counseling, support groups, and/or other types of victims services; and
- (12) Faith-based organizations that provide direct services to victims of crime. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Project Requirements: Grant funds can support the following services, activities, and costs:

- (1) Immediate Health and Safety. Projects should provide services that respond to the immediate emotional and physical needs (excluding medical care) of crime victims, such as crisis intervention, accompanying victims to hospitals for medical examinations, providing victims with hotline counseling, emergency food, clothing, transportation, and shelter, and providing emergency services intended to restore the victim's sense of security.
- (2) Mental Health Assistance. These services include aid that assists the primary and secondary victims of crime.
- (3) Assistance with Participation in Criminal Justice Proceedings. Projects should help victims participate in the criminal justice system.
- (4) Forensic Examinations. Forensic examinations are allowable costs only for sexual assault victims and only to the extent that other funding sources are unavailable or insufficient to pay for the examinations. The examinations must conform to state evidentiary collection requirements.
- (5) Costs Necessary and Essential to Providing Direct Services. These include prorated costs of rent, telephone service, transportation costs for victims to receive services, emergency transportation costs that enable a victim to participate in the criminal justice system, and local travel expenses for service providers.
- (6) Special Services. These include services to assist crime victims with managing practical problems created by victimization including the following:
 - (A) acting on behalf of the victim with other service providers, creditors, or employers;
 - (B) assisting the victim to recover property retained as evidence;
 - (C) assisting in filing for compensation benefits; and
 - (D) helping the victim to apply for public assistance.
- (7) Personnel Costs. These include costs directly related to providing services such as staff salaries and fringe benefits and including malpractice insurance, costs for advertising to recruit grant-funded personnel, and costs to train paid and volunteer staff.

(8) Restorative Justice. Opportunities for a crime victim to meet with the offender who perpetrated the crime against the victim, if such meetings are requested or voluntarily agreed to by the victim and have possible beneficial or therapeutic value to the victim.

(9) Other Allowable Costs and Services. CJD does not consider the following services, activities, and costs as direct crime victim services, but recognizes that they are often an essential activity necessary to ensure that the grantee can provide high quality direct services. Before grantees can use grant funds to pay for these services, activities, and costs, CJD and the grantee must agree that the grantee cannot provide direct services to crime victims without additional support for the expenses, that the grantee has no other source of pecuniary support for them, and that the grantee will limit the use of grant funds in paying for them. These services, activities, and costs include:

(A) Skill training for staff. Grant funds designated for training shall be used exclusively for developing the skills of direct service providers.

(B) Training and related travel for staff. This includes the cost of travel, meals, lodging and registration fees for staff that provide direct services to victims of crime.

(C) Equipment and furniture.

(D) Purchase or lease of vehicles. Grantees must obtain CJD approval in writing before purchasing or leasing vehicles.

(E) Advanced technologies. This covers information technology costs associated with purchasing systems, software, or equipment that expand a grantee's ability to reach and serve crime victims.

(F) Contracts for specialized professional services. Grantees may not use a majority of grant funds for contracted services that provide administrative, overhead, and other indirect costs. Examples of specialized professional services include the following:

(i) assistance in filing restraining orders or establishing emergency custody or visitation rights;

(ii) emergency psychological or psychiatric services; or

(iii) interpretation for the deaf or for crime victims whose primary language is not English.

(G) Operating costs.

(H) Supervision of direct service providers.

(I) Repair or replacement of essential items.

(J) Training materials for staff.

(K) Public Presentations. Grant funds may be used to support presentations that are made in schools, community centers, or other forums, that are designated to identify crime victims and provide or refer them to needed services.

Requirements: All applicants must meet each of the following criteria:

(1) Promote collaboration and coordination among local service systems that involve multiple disciplines and support a seamless delivery of a continuum of services that focus on each individual's return to physical, mental, and emotional health. An example of this type of approach is advocacy, law enforcement, prosecution, and other government and non-government services working together in a professional environment of cooperation and respect among service providers;

(2) have a record of providing effective services to victims. (If not, the applicant must show that at least twenty-five percent (25%) of its financial support comes from non-federal sources.);

(3) use volunteers, unless CJD determines that a compelling reason exists to waive this requirement;

- (4) promote community efforts to aid crime victims;
- (5) assist crime victims in applying for crime victims' compensation benefits;
- (6) maintain civil rights information;
- (7) provide equal services to victims of federal crime;
- (8) provide grant-funded services at no charge to victims;
- (9) maintain the confidentiality of client-counselor information and research data; and
- (10) not discriminate against victims because they disagree with the way the State is prosecuting the criminal case.

Project Period: Grant-funded projects begin on or after July 1, 2008, and expire on or before June 30, 2009.

Application Process: Applicants may access CJD's grant management website at <https://cjdonline.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to applicants that promote collaboration and coordination among local service systems that involve multiple disciplines and support a seamless delivery of a continuum of services that focus on each individual's return to full physical, mental, and emotional health. An example of this type of approach is advocacy, law enforcement, prosecution, and other government and non-government services working together under a single project in a professional environment of cooperation and respect among service providers. CJD also encourages applicants to streamline administrative and reporting processes by consolidating grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's grant management website on or before January 31, 2008.

Selection Process:

- (1) For eligible local and regional projects:
 - (a) Applications are forwarded by CJD to the appropriate regional council of governments (COG).
 - (b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.
 - (c) CJD will accept priority listings that are approved by the COG's executive committee.
 - (d) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.
- (2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact person: If additional information is needed, contact Lori Melcher at lmelcher@governor.state.tx.us or (512) 463-1919.

TRD-200705930
 Christopher Burnett
 Assistant General Counsel
 Office of the Governor
 Filed: November 28, 2007



Texas Health and Human Services Commission

Public Notice

The Health and Human Services Commission (HHSC) announces its intent to submit a waiver proposal for the reimbursement methodology for a primary care case management (PCCM) program under the authority of §1915(b) of the Social Security Act.

The waiver allows a reimbursement methodology that would permit the Texas Medicaid claims administrator to negotiate PCCM hospital contracts and discount rates with non-TEFRA (Tax Equity Fiscal Responsibility Act) hospitals. HHSC has the oversight authority to approve the final negotiated contracts and rates.

HHSC is requesting that the waiver application be approved for a two-year period beginning February 1, 2008 and ending January 31, 2010. The proposed waiver is estimated to result in total cost savings of approximately \$23.8 million, with approximately \$14.4 million cost savings in federal funds and \$9.4 million cost savings in state general revenue. First year savings are approximately \$11.4 million, with approximately \$6.9 million cost savings in federal funds and 4.5 million in state general revenue. Second year savings are approximately \$12.4 million, with approximately \$7.5 million cost savings in federal funds and \$4.9 million in state general revenue.

The public comment period will end 30 days following the date this notice is published in the *Texas Register*. To view copies of the proposed changes persons may visit local Department of Aging and Disability Services offices or to obtain copies of the proposed waiver, interested parties may contact Betsy Johnson by mail at Health and Human Services Commission, P.O. Box 85200, H-620, Austin, Texas 78708-5200; by telephone at (512) 491-1199; by facsimile at (512) 491-1953; or by e-mail at betsy.johnson@hhsc.state.tx.us. Comments on the proposed waiver may be submitted by mail, facsimile, or by e-mail to Ms. Johnson at the above address. To request a copy of all comments, please contact Ms. Johnson at the above address.

TRD-200705739

Steve Aragón
 Chief Counsel
 Texas Health and Human Services Commission
 Filed: November 20, 2007



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 08-001, Amendment Number 805, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The requested effective date for the proposed amendment is January 1, 2008.

The purpose of this amendment is to initiate a process by which the State will pay a monthly capitated payment to HMOs who have entered into a Medicare Risk Product Agreement with the Centers for Medicare and Medicaid Services (CMS) in exchange for the HMO's payment of the Cost Sharing Obligations to health care service providers attributable to Dual Eligible Members enrolled in the HMO's Medicare Risk Product.

The proposed amendment will have no fiscal impact to the state or federal budgets.

Interested parties may obtain copies of the proposed amendment by contacting D.J. Johnson by mail at Health and Human Services Commission, 11209 Metric, H-320 Austin, Texas 78758; by telephone at (512) 491-1301; by facsimile at (512) 491-1969; or by e-mail at david.johnson@hhsc.state.tx.us. Copies of the proposal will also be

made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200705740

Steve Aragón
Chief Counsel

Texas Health and Human Services Commission
Filed: November 20, 2007



Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals (RFP) for consultant contract for "a study of Texas boarding houses" (**529-08-0127**). HHSC seeks to secure a consultant to develop a comprehensive report required by House Bill 1168, 80th Legislature, Regular Session, 2007, that would provide a study and recommendations regarding the most effective method for resolving issues around boarding houses, as defined in the bill. The recommendations should result in a systematic approach to providing for and protection of the health, safety, and well-being of Texans residing in boarding houses pursuant to this RFP.

The State of Texas, by and through the HHSC, seeks a study of Texas boarding houses and a report on a systematic approach to ensuring the health, safety, and well-being of Texans residing in boarding houses in accordance with the specifications contained in this RFP.

The RFP is located in full on HHSC's Business Opportunities Page under "HHSC Contracting Opportunities" link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on December 7, 2007.

The successful contractor will be expected to submit the final report to HHSC by December 1, 2008.

Health and Human Services Commission's Sole Point-of-Contact for Procurement

Elizabeth Ward

Enterprise Contract and Procurement Services HHSC

elizabeth.ward@hhsc.state.tx.us

909 West 45th Street

Austin, Texas 78751

Phone: (512) 206-5416

Fax: (512) 206-5475

All questions regarding the RFP must be sent in writing the above-referenced contact by 4:00 p.m. Central Time on December 14, 2007. HHSC will post all written questions received with HHSC's responses on its website on December 19, 2007 or as they become available. All proposals must be received at the above-referenced address on or before 4:00 p.m. Central Time on January 8, 2008. Proposals received after this time and date will not be considered.

HHSC will hold a Vendor Conference on December 13, 2007 from 1:30 p.m. to 3:30 p.m. at Brown Heatly Building, 4900 North Lamar, Room 4530.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200705931

Steve Aragón
Chief Counsel

Texas Health and Human Services Commission
Filed: November 28, 2007



Department of State Health Services

Notice of Emergency Impoundment Order

Notice is hereby given that the Department of State Health Services (department) has ordered that all radioactive material found at 111 The Lee Way, Gun Barrel City, owned by the Estate of John Hanner (unlicensed), be impounded and transferred to the department's Austin headquarters for temporary storage.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6770, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200705865

Lisa Hernandez
General Counsel

Department of State Health Services
Filed: November 27, 2007



Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by CARE N' CARE INSURANCE COMPANY, INC., a domestic life, accident and/or health company. The home office is in Fort Worth, Texas.

Application to change the name of UNIVERSAL INSURANCE COMPANY OF TEXAS to UNIVERSAL NORTH AMERICA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Sarasota, Florida.

Application for admission to the State of Texas by SENTINEL SECURITY LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Salt Lake City, Utah.

Application to change the name of VALLEY FORGE LIFE INSURANCE COMPANY to REASSURE AMERICA LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Fort Wayne, Indiana.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200705925

Gene C. Jarmon
Chief Clerk and General Counsel

Texas Department of Insurance
Filed: November 28, 2007



Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health

benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Great Midwest Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal Division--Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Great Midwest Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, and a determination that all requirements of law have been met, the Commissioner or his designee may take final action on the applicant's election to be a risk-assuming health benefit plan issuer.

TRD-200705933

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: November 28, 2007



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of EDWARDS RISK MANAGEMENT, INC., (using the assumed name of EDWARDS CLAIMS ADMINISTRATION), a domestic third party administrator. The home office is MARBLE FALLS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200705929

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: November 28, 2007



Texas Lottery Commission

Instant Game Number 1040 "\$1 Million Double Action"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1040 is "\$1 MILLION DOUBLE ACTION". The play style for Game 1 is "key number match with match up". The play style for Games 2 and 3 is "three in a line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1040 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 1040.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, X SYMBOL, O SYMBOL, DOLLAR SYMBOL, \$20.00, \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200, \$400, \$1,000, \$10,000 and \$ONE MILL SYM-BOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1040 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
X SYMBOL	
O SYMBOL	
\$ SYMBOL	
\$20.00	TWENTY
\$30.00	THIRTY
\$40.00	FORTY

\$50.00	FIFTY
\$80.00	EIGHTY
\$100	ONE HUND
\$200	TWO HUND
\$400	FOR HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$ONE MILL	ONE MIL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1040 - 1.2E

CODE	PRIZE
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400.

I. High-Tier Prize - A prize of \$1,000, \$10,000 or \$1,000,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1040), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1040-0000001-001. .

L. Pack - A pack of "\$1 MILLION DOUBLE ACTION" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$1 MILLION DOUBLE ACTION" Instant Game No. 1040 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$1 MILLION DOUBLE ACTION" Instant Game is determined once the latex on the ticket is scratched off to expose 64 (sixty-four) Play symbols. In Game 1, if a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals 3 matching prize amounts play symbols in GAME 1, the player wins that amount. In Games 2 and 3, for each GAME, if a player reveals 3 "X"s or 3 "O"s in any one row, column or diagonal, the player wins PRIZE shown for the GAME. If a player reveals 3 dollar play symbols in any one row, column or diagonal, the player wins DOUBLE the PRIZE shown for that GAME. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 64 (sixty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 64 (sixty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 64 (sixty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 64 (sixty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. The top prize will appear on every ticket unless otherwise restricted.

C. Game 1: No duplicate non-winning YOUR NUMBERS play symbols.

D. Game 1: No duplicate WINNING NUMBERS play symbols.

E. Game 1: No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 20 and \$20).

F. Game 1: No four or more like non-winning prize symbols in this game.

G. Game 1: When a prize amount is shown three (3) times in this game, there will be no occurrence of those prize symbols' corresponding YOUR NUMBERS play symbols matching any of the WINNING NUMBER play symbols.

H. Games 2 and 3: There will only be one occurrence of 3 matching play symbols appearing in a row, column or diagonal per game.

I. Games 2 and 3: The "\$" (doubler) play symbol will only appear in a row, column or diagonal as dictated by the prize structure.

J. Games 2 and 3: All three play symbols will be used on both games.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$1 MILLION DOUBLE ACTION" Instant Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200 or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1 MILLION DOUBLE ACTION" Instant Game prize of \$1,000 or \$10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$1 MILLION DOUBLE ACTION" top level prize of \$1,000,000, claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "\$1 MILLION DOUBLE ACTION" Instant Game prize, the claimant must sign the winning

ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$1 MILLION DOUBLE ACTION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian

a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$1 MILLION DOUBLE ACTION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 1040. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1040 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	450,000	6.67
\$30	300,000	10.00
\$40	90,000	33.33
\$50	60,000	50.00
\$80	90,000	33.33
\$100	40,000	75.00
\$200	9,875	303.80
\$400	1,500	2,000.00
\$1,000	625	4,800.00
\$10,000	20	150,000.00
\$1,000,000	4	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1040 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1040, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200705833
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 26, 2007

Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

This is a notice of an opportunity for public comment and a public hearing on Richard V. Brown's application for a Texas Parks and Wildlife Department (TPWD) permit to dredge state-owned sand and gravel from the Bullhead Creek in Real County at a location approximately 500 yards downstream from Ranch Road 2631 crossing and approximately 1000 yards upstream from Ranch Road 2631 crossing.

The hearing will be held at 11:00 a.m. on Thursday, January 10, 2008 at TPWD Headquarters, 4200 Smith School Road, Austin, Texas 78744.

The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing.

Submit written comments, questions, or requests to review the application to: Beth Hilliard, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax: (512) 389-4482; or e-mail: beth.hilliard@tpwd.state.tx.us.

TRD-200705825
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: November 21, 2007

Prairie View A&M University

Request for Proposals--Management Review Project

Pursuant to Government Code, §2254.028, Prairie View A&M University is requesting proposals in response to the Request for Proposals (RFP) 715-08-CAHS-MgmtRevProject. A copy of this RFP is available on the Electronic State Business Daily.

For additional information regarding this RFP, you may contact Randy Millin, CTPM at (936) 261-1930 or by e-mail at rlmillin@pvamu.edu.

TRD-200705716
W. Kay Peavy
Manager of Procurement and Contracts
Prairie View A&M University
Filed: November 19, 2007

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 19, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35041 before the Public Utility Commission of Texas.

The requested CFA service area will be expanded, if approved, to include the City of Lockhart Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35041.

TRD-200705873

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 27, 2007



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 20, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35042 before the Public Utility Commission of Texas.

The requested CFA service area will be expanded, if approved, to include the City of La Villa, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35042.

TRD-200705874

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 27, 2007



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 26, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Baldwin County Internet/DSSI Service, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35058 before the Public Utility Commission of Texas.

The requested CFA service area will be expanded, if approved, to include the counties of Hidalgo and Cameron, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35058.

TRD-200705887

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 27, 2007



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 19, 2007, TelCove Operations, Inc. filed an application with the Public Utility Commission of Texas (Commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60219. Applicant intends to reflect a corporate restructuring.

The Application: Application of TelCove Operations, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 35037.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 12, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35037.

TRD-200705872

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 27, 2007



Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On November 16, 2007, Supra Telecommunications and Information Systems, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60177. Applicant intends to relinquish its certificate.

The Application: Application of Supra Telecommunications and Information Systems, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 35027.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 12, 2007. Hearing and speech-im-

paired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35027.

TRD-200705751

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 20, 2007



Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on October 19, 2007, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition of the Tilden Exchange for Expanded Local Calling Service, Project Number 34929.

The petitioners in the Tilden exchange request ELCS to the exchanges of Dilley, George West, Jourdanton and Three Rivers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512)936-7120 or toll free at 1-888-782-8477 no later than December 24, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 34929.

TRD-200705886

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 27, 2007



Public Notice of Request for Comments on Combined Heat and Power

The Public Utility Commission of Texas (commission) seeks comments on combined heat and power in Texas, to assist it in preparing a report that is required under Public Utility Regulatory Act §39.912, relating to combined heating and power technology. Project Number 34934, *PUC Report to the Texas Legislature Concerning Combined Heat and Power*, has been established for this project.

The commission requests that interested persons file comments on combined heating and power issues, in accordance with the following outline:

1. Executive Summary of Comments
2. Combined Heating and Power in Texas: Historical Development and Use and Current Installations
3. Combined Heating and Power Technologies and Their Uses and Value
 - a. Technology Summaries
 - b. Commercial and Industrial Applications
 - c. CHP and Renewable Energy
 - d. Reliability Benefits
 - e. Security Benefits
 - f. Environmental Benefits

g. Economic Impacts

4. The Potential of Combined Heating and Power to Improve Energy Efficiency

5. Barriers to Combined Heating and Power

6. Implementation Options and Recommendations

Initial comments on these topics may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 not later than March 7, 2008. Interested persons may file responses to the initial comments not later than May 4, 2008. All responses should include a reference to Project Number 34934.

Questions concerning the workshop or this notice should be referred to Theresa Gross, Competitive Markets Division, (512)936-7367. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200705928

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2007



Request for Comments and Public Notice of Workshop on Rulemaking Proceeding to Adopt New §25.55, Relating to Location in Floodplains and Emergency Power for Electric Utility Facilities

The staff of the Public Utility Commission of Texas (commission) requests that interested persons file comments on new draft rule §25.55, relating to Location in Floodplains and Emergency Power for Electric Utility Facilities. The strawman is available at <http://www.puc.state.tx.us/rules/rulemake/34737/34737.cfm> or on the commission's interchange filing system under Project Number 34737.

Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days of the date of publication of this notice. All comments should reference Project Number 34737.

The staff of the Commission requests that interested persons file comments on the following questions:

1. Does the definition for "transmission substation" include all facilities that should be covered by this rule?
2. Is there a more definitive definition for "critical transmission substation?"
3. Is 72 hours a sufficient amount of time to restore the source of outside power to the substation?
4. Are there sources other than the ones suggested by Staff that can be used to determine the 100-floodplain?
5. Is 24 months sufficient time to implement the requirements of this rule?

The staff of the commission will hold a workshop regarding new draft rule §25.55, on Wednesday, January 16, 2008, at 9:30 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711.

Questions concerning this notice should be referred to Brian Almon, Director of Electric Transmission Oversight, Infrastructure Reliability

Division, brian.almon@puc.state.tx.us, (512) 936-7355; or Nathan Barrow, Attorney, Legal Division, nathan.barrow@puc.state.tx.us, (512) 936-7477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200705875

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 27, 2007



Request for Comments and Public Notice of Workshop on Rulemaking Proceeding to Adopt New §26.56, Relating to Location in Flood Plains and Emergency Power for Certificated Telecommunications Utilities' Facilities in Hurricane Prone Areas

The staff of the Public Utility Commission of Texas (commission) requests that interested persons file comments on draft rule §26.56, relating to Location in Flood Plains and Emergency Power for Certificated Telecommunications Utilities' Facilities in Hurricane Prone Areas. The strawman is available at <http://www.puc.state.tx.us/rules/rulemake/34742/34742.cfm> or on the commission's interchange filing system under Project Number 34742.

The staff of the Commission requests that interested persons file comments on the following questions:

1. Currently, the Draft Rule proposes a January 1, 2010 effective date. Is the proposed effective date adequate for compliance?
2. Currently the Draft Rule proposes a definition of "remote facilities" that comprises a list of facilities that would be included in the definition. What other facilities, if any, should be included in the definition of "remote facilities"?

Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days of the date of publication of this notice. All comments should reference Project Number 34742.

The staff of the commission will hold a workshop regarding new draft rule §26.56, on Tuesday, January 15, 2008, at 9:30 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711.

Questions concerning this notice should be referred to Nara Srinivasa, Director of Communications Network Oversight Section, Infrastructure Reliability Division, nara.srinivasa@puc.state.tx.us, (512) 936-7335; or Nathan Barrow, Attorney, Legal Division, nathan.barrow@puc.state.tx.us, (512) 936-7477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200705876

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 27, 2007



Request for Comments on Net Metering and Interconnection of Renewable Distributed Generation

The Public Utility Commission (commission) is conducting a rulemaking to establish the methods and procedures necessary to effect inter-

connection, metering and settlement of transactions relating to renewable distributed generation of less than two megawatts under the Texas Public Utility Regulatory Act §39.914 and §39.916. Project Number 34890, *Rulemaking Relating to Net Metering and Interconnection of Distributed Generation* has been established for this proceeding.

The commission requests interested persons to file comments to the following questions:

1. What changes to ERCOT wholesale settlement, if any, are required to support the implementation of new PURA §39.914 and §39.916?
2. Are current market processes (e.g., Texas SET) sufficient to support transactions of two megawatts or less of distributed renewable generation? If not, how should the existing processes be modified?
3. How might non-Transmission Distribution Utility supplied meters integrated with or connected to distributed renewable energy systems be used in the metering of distributed generation?
 - A. What advantages might this provide?
 - B. What issues might be raised by such arrangements?
 - C. How might any such issues be mitigated?
4. May there be different metering methods for distributed renewable generation owners who do not wish to sell surplus electricity than for those who do? If so, how might they differ?
5. TDU fees and riders are charged for customers with installed distributed generation. Should different billing determinants or rates be adopted for these customers?

6. Do the safety, technical or performance characteristics of distributed renewable generation of two megawatts or less require changes to Substantive Rule §25.212? If so, are such changes applicable only to specific forms of distributed renewable generation?

Responses and comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Initial responses and comments will be accepted within 21 days of the date of publication of this notice; reply responses and comments will be accepted within 28 days of publication of this notice. All responses should reference Project Number 34890.

Questions concerning this notice should be referred to David Smithson, Policy Analyst, Competitive Markets Division, (512) 936-7156.

TRD-200705906

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 27, 2007



Texas State Soil and Water Conservation Board

Request for Proposals

INTRODUCTION

This document provides instructions and guidance for applicants seeking funding under the Clean Water Act (CWA) §319(h) Agricultural/Silvicultural Nonpoint Source Grant Program in Texas. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the Texas State Soil and Water Conservation Board (TSSWCB) under the authorization of §319(h) of the Clean Water Act. TSSWCB then administers/awards these federal funds as grants for activities that address the goals and objectives stated in the Texas Nonpoint Source Management Program. This document

can be accessed online at <http://www.tsswcb.state.tx.us/files/contentimages/2005mgmtprogram.pdf>.

The types of agricultural/silvicultural nonpoint source pollution abatement activities that can be funded with §319(h) grants include the following: implementation of watershed protection plans (WPP) and the nonpoint source portion of TMDL Implementation Plans, surface water quality monitoring, demonstration of innovative BMPs, technical assistance, public outreach/education projects, development of WPPs, and monitoring activities to determine the effectiveness of specific pollution prevention methods. Research activities are not eligible for §319(h) grant funding.

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration and education projects within the boundaries of impaired or threatened watersheds as well as projects in unimpaired watersheds. Up to \$2 million of the TSSWCB's CWA §319(h) grant will be eligible for this request for proposals (RFP). Approximately \$1.2 million will be targeted to Implementation and Education, \$800,000 will be targeted to Watershed Planning and Assessment. No more than ten percent of this RFP can be utilized for ground-water projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for funding.

Project proposals should, where applicable, stress interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and stress public participation.

This RFP does not set a maximum or minimum amount for projects, however project funding generally ranges between \$100,000 and \$400,000. The TSSWCB CWA §319(h) Nonpoint Source Grant Program has a 60/40% match requirement. The cooperating entity will be reimbursed 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The 40% match must be from non-federal sources and should be described in the budget justification. Reimbursable indirect costs are limited to 15% of total federal direct costs.

Quarterly and final project reports are the minimum reporting requirements. Deliverables for general distribution (i.e., videos, news releases, literature) will be submitted to EPA for approval through the TSSWCB. All projects that include an environmental data collection component must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and EPA. Project budgets and timelines should account for the development and review of QAPPs accordingly. More information on QAPPs and the TSSWCB Environmental Data Quality Management Plan is available at <http://www.tsswcb.state.tx.us/quality>.

TSSWCB PRIORITIES

For the FY 2008 RFP, the following priorities have been identified.

Priority Project Activities

- * Implement WPPs and TMDL I-Plans (See priority areas listed below)
- * WPP Development Initiatives (See priority areas listed below)
- * Support use of Farm Bill Programs through Cooperative Conservation
- * Clarification of bacteria impairment in Category 5c waterbodies through Surface Water Quality Monitoring

Priority Areas for WPP and TMDL Implementation Projects

- * WPPs
- ** Concho River

** Pecos River

** Plum Creek

* TMDLs (approved)

** Lake O' the Pines (DO through Phosphorus)

** Adams and Cow Bayous (Bacteria and DO)

Priority Areas for WPP Development Initiatives

* Watershed Identified by the Southeast and South Central Watershed Coordination Steering

Committee (<http://www.tsswcb.state.tx.us/cwp>)

* Red River Basin (Basin 2)

** Exclusive of Buck Creek (Segment 0207A)

** Upstream and exclusive of Red River above Lake Texoma (Segment 0204)

** Exclusive of Red River (Segments 0206, 0205)

** Exclusive of Little Wichita River (Segments 0211, 0212, and 0213)

* Sabine River Basin (Basin 5)

** Upstream and exclusive of Toledo Bend Reservoir (Segment 0504)

* Neches River Basin (Basin 6)

** Upstream and exclusive of B.A. Steinhagen Lake (Segment 0603)

** Upstream and exclusive of Sam Rayburn Reservoir (Segment 0610)

* Colorado River Basin (Basin 14)

** Downstream and exclusive of O.H. Ivie Reservoir (Segment 1433)

** Upstream and exclusive of Lake Travis (Segment 1404)

** Exclusive of Pecan Bayou (Segments 1417, 1431, 1432, 1418, 1419, 1420)

** Inclusive of Pedernales River (Segment 1414)

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local governments, educational institutions, non-profit organizations, and state agencies. Private organizations, for profit, may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS

Submitted proposals will be reviewed, scored, and ranked based on the evaluation and ranking criteria attached to this RFP. A minimum scoring requirement (70 points) is necessary for proposals to be eligible for consideration.

Applicants whose proposals are recommended for funding will be notified and will be assigned to a TSSWCB project manager. The project manager will work with the applicant to amend and finalize the proposal prior to submittal to EPA. EPA will review and approve all proposals prior to TSSWCB awarding grant funds.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's proposal submission packet, please visit <http://www.tsswcb.state.tx.us/managementprogram> or contact TJ Helton at (254) 773-2250 extension 234. Submit proposals electronically to thelton@tsswcb.state.tx.us and mail eight hardcopies to the address below. Proposals must be received electronically by COB February 1, 2008 to be considered.

Address Proposals to:

Texas State Soil and Water Conservation Board

Attention: TJ Helton

P.O. Box 658

Temple, Texas 76503

FY 2008 GRANT TIMELINE

Issuance of RFP: December 7, 2007

Deadline for Submission of Proposals: February 1, 2008

Proposal Evaluation: February 2008

Notification of Selected Proposals/Unsuccessful Applicants:
March/April 2008

Begin working with applicants to finalize Proposal: March/April 2008

Submit Grant Application to EPA: May 2008

Contract Award: July 2008

Project Start Date: September 2008

TRD-200705844

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: November 26, 2007



Texas Department of Transportation

Public Notice--Aviation

Pursuant to Transportation Code, §21.111, and 43 Texas Administrative Code §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov**, click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200705868

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: November 27, 2007



Public Notice of FEIS (Grand Parkway Segment E)

Pursuant to 43 Texas Administrative Code §2.5(e)(8)(B), the Texas Department of Transportation (department) is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of State Highway 99, IH 10 to US 290 (the Grand Parkway Segment E) northwest of Houston in Harris County, Texas. Comments regarding the FEIS should be submitted to The Grand Parkway Association, Attention: Segment E Comments, located at 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or the Director of Project Development at the Texas Department of Transportation's

Houston District Office located at 7600 Washington Avenue, Houston, Texas prior to 5:00 p.m. on January 7, 2008. The Texas Department of Transportation's mailing address is P.O. Box 1386, Houston, Texas 77251-1386.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment E at the corridor level (five corridors), transportation mode level (No Build, Transportation System Management Alternatives (TSM), Travel Demand Alternatives (TDM), and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access tollway from Franz Road to US 290 in Harris County, a distance ranging from 13.8 to 14.4 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane controlled access tollway within a 400-foot (ROW) width. A total of three build alternative alignments, in addition to the No-Build alternative, have been presented in the FEIS. All three alternative alignments lie between Franz Road and US 290 in a north-south direction. Alternative Alignment A begins at Franz Road and traverses mainly through the center of the study area. This alignment alternative terminates at US 290, approximately 1.8 miles northwest of Mason Road and is 13.84 miles in length. Alternative Alignment B starts at the same location as Alternative Alignment A but traverses mainly through the eastern portion of the study area. Alternative Alignment B terminates at the same location of Alternative Alignment A, but is 13.95 miles in length. Alternative Alignment C starts at the same location as Alternative Alignment A and B, but traverses mainly through the western portion of the study area. Alternative Alignment C terminates at US 290, approximately 1.1 miles southeast of Becker Road and is 14.41 miles in length.

The preferred corridor and transportation mode and the recommended alternative alignment as presented in the DEIS, were selected after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments. After consideration of all agency and public comments received on the DEIS as well as updated environmental data, the GPA, in coordination with the department and FHWA, selected a Preferred Alternative Alignment. It was determined after careful review of the DEIS comments that the Recommended Alternative Alignment as presented in the DEIS be carried forward as the Preferred Alternative Alignment. The preferred build alternative that has emerged from the study was proposed on the basis of its ability to best facilitate the projects Need and Purpose while minimizing impacts to the natural, physical, and social environments. The Preferred Build Alternative Alignment begins and terminates at the same location as Alternatives A, B, and C, and is 13.95 miles in length. The preferred alternative alignment for Segment E would require the acquisition of new ROW (693.1 acres), the adjustment of utility lines, and the filling of aquatic resources including jurisdictional wetlands (42.86 acres). No business or residential displacements would occur, and no historic sites or endangered species are expected to be affected. One archeological site at Cypress Creek has been determined as eligible for the National Register of Historic Places. The extent of impacts to the site cannot be determined until detailed construction plans for the Cypress Creek crossing are more fully developed. At that time, the department will propose a scope of work to mitigate the site appropriate to the proposed impacts.

Copies of the FEIS and other information about the project may be obtained from the Texas Department of Transportation's Houston District Office at the previously mentioned address. For further information, please contact David Gornet at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241. Copies of the FEIS may also be reviewed at the offices of the Grand Parkway Association, located at 4544 Post Oak Place, Suite 222, Houston, Texas; at the Houston Public Library in the Texas

Room, 500 McKinney, Houston, Texas; at the Harris County Public Library, Katy Branch, 5414 Franz Road, Katy, Texas; at the Harris County Public Library, Kathryn Tyra Branch, 16719 Clay Road, Houston, Texas; and the Harris County Public Library, Northwest Branch, 11355 Regency Green Drive, Cypress, Texas.

TRD-200705869

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: November 27, 2007

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The Texas A&M University System

Request for Proposal

RFP 08-0008 Consulting Services: Building Commissioning Program

Texas A&M University is accepting proposals and intends to enter into an Agreement with a firm to provide technical services for implementation of an ongoing Building Commissioning Program (BCP). The scope of work for this project will include, but is not necessarily limited to, Retro-Commissioning (RC) services for mechanical/electrical systems, including HVAC and lighting control systems. The intent of this process is to reduce energy consumption while meeting required standards for safety, indoor air quality and occupant comfort, which has the added benefit of improving the overall environment. An important part of this process is to identify, recommend and implement improvements in building system design and operation.

Information may be obtained by contacting:

Jeff Zimmermann, A.P.P.

Senior Buyer

Dept. of Strategic Sourcing & Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-3013

or e-mail at j-zimmermann@tamu.edu

Selection criteria will include methodology, qualifications, references, and cost. Proposals must be received on or before 2:00 p.m. CDT on January 8, 2008.

TRD-200705885

Vickie Burt Spillers

Executive Secretary to the Board

The Texas A&M University System

Filed: November 27, 2007

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Upper Rio Grande Workforce Development Board

Notice for Request for Proposal

To All Potential Proposers: The Upper Rio Grande Workforce Development Board is seeking Proposals from qualified and eligible individuals, organizations and/or management teams for the Management and Operation of the Upper Rio Grande at Work Career Centers in the Boards Region. Request for Proposal (RFP) # PY07-RFP-200-132 may be requested in writing or picked up in person on and after 9:00 a.m. MST, Monday, November 26, 2007, at the Board offices located in the Wells Fargo Bank Building, 221 N. Kansas, Suite 1000, El Paso, Texas 79901. The RFP will also be available on the Board's Web Site (www.urgwdb.org) on and after the above date and time.

A Proposers' Conference is scheduled for this procurement. The conference will be held at 11:00 a.m. MST, Friday, December 7, 2007 in the Board Conference Room located at the above address. The conference is not mandatory but strongly encouraged. Responses to this RFP must be physically received by the Procurement Department at the Board offices no later than 4:00 p.m. MST, January 22, 2007.

Questions pertaining to this RFP may be directed to Juan Olvera, at (915) 772-2002, ext. 202 or via email at juan.olvera@urgwdb.org.

TRD-200705836

Juan Olvera

Procurement Manager

Upper Rio Grande Workforce Development Board

Filed: November 26, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).